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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 752

SINCLAIR REFINING COMPANY, PETITIONER,

vs.

JENKINS PETROLEUM PROCESS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 2, 1933

CERTIORARI GRANTED APRIL 10, 1933

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(37,449)

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[fol. 3]

UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, SOUTHERN DIVISION

Equity. No. 939

JENKINS PETROLEUM PROCESS COMPANY, Plaintiff-Appellant,

vs.

SINCLAIR REFINING COMPANY, Defendant-Appellee

TRANSCRIPT OF RECORD OF DISTRICT COURT

Appearances:

For Appellant: Philip G. Clifford, Portland, Maine; C. Stanley Thompson, Rush H. Williams, Frederick Shafer, Washington, D. C.

For Appellee: Verrill, Hale, Booth & Ives, Portland, Maine; Pennie, Davis, Marvin & Edmonds, 165 Broadway, New York.

[fol. 4] IN UNITED STATES DISTRICT COURT

EXPLANATION

The original action between the same parties was entered in this Court as a cause in equity, which, after hearing, was dismissed. The plaintiff appealed, and by mandate of Circuit Court of Appeals, decree of District Court was reversed and the cause in equity was ordered transferred to the Law side of the court, and said original action now stands on the docket of this Court as an action at law.

The present action is a Bill for Discovery of facts alleged to be material in support of the plaintiff's case in said action at law.

IN UNITED STATES DISTRICT COURT

BILL IN EQUITY FOR DISCOVERY—Filed September 8, 1931

To the Honorable John A. Peters, Judge of the United States District Court for the District of Maine, sitting in equity:

Comes now the plaintiff, Jenkins Petroleum Process Company, a corporation of the State of Wisconsin, and brings this its Bill in Equity for discovery against the defendant, Sinclair Refining Company, a corporation of the State of Maine, and for its cause of action the plaintiff respectfully shows unto the court and alleges as follows:

1. The plaintiff, Jenkins Petroleum Process Company, is and during all the time hereinafter mentioned it has been a corporation organized and existing under and by virtue of the laws of the State of Wisconsin; it is a resident of and is domiciled in the State of Wisconsin, and it has an office and a place of business at 844 Rush Street, in the City of Chicago, in Cook County, in the State of Illinois.

2. The defendant, Sinclair Refining Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and it is a resident of and is domiciled in the State of Maine. Said defendant originally was incorporated and for many years it carried on business [fol. 5] under the name of Cudahy Refining Company, and by a certificate of amendment to its Articles of Incorporation filed the 25th day of January, 1917, the name of the defendant corporation was changed from Cudahy Refining Company to Sinclair Refining Company.

3. The amount in controversy in this cause, exclusive of interests and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

The plaintiff brings this its Bill in Equity for the discovery by the defendant of facts which rest peculiarly within the knowledge of the defendant and of documents in the possession of the defendant which are material to the support of the plaintiff's case in an action at law which now is pending and is undetermined on the law side of this court.

4. On or about the 29th day of August, 1929, pursuant to the mandate of the Circuit Court of Appeals for the First

Circuit dated July 30, 1929, and to the permission granted by order of this Court dated the 28th day of August, 1929, in a cause entitled "Jenkins Petroleum Process Company, plaintiff, v. Sinclair Refining Company, defendant," the plaintiff amended its Bill of Complaint in said cause by substituting for the same a declaration in an action at law for the breach of that certain contract of October 2, 1916, which was mentioned in said mandate. A copy of said declaration in said action at law is attached hereto marked Exhibit "A" and is made a part hereof. Said action at law is entitled "Jenkins Petroleum Process Company, plaintiff, v. Sinclair Refining Company, defendant," and it has been docketed on the law side of this Court as Docket No. 1178. Thereafter, with leave granted by the order of this Court on the 26th day of May, 1930, the plaintiff amended its said declaration in said action at law by adding thereto a third count, a copy of which said third count is attached hereto marked Exhibit "B", and is made a part hereof. The defendant Sinclair Refining Company duly entered its notice of appearance by counsel in said action at law and on or about the 24th day of June, 1930, said defendant filed in the office of the clerk of this Court its pleas in said action at law, a copy of which said pleas is attached hereto, marked Exhibit "C," and is made a part hereof.

[fol. 6] Said action at law has been at issue since the 24th day of June, 1930, and it still is pending and is undetermined on the law side of this Court.

5. The plaintiff further alleges on information and belief that during the period of time starting on the 19th day of November, 1919, and extending down to the date of the filing of said declaration in said action at law, the defendant Sinclair Refining Company constructed, operated and used a large number of cracking stills for the commercial production of gasoline and of other petroleum products resulting from the cracking of petroleum oils, and that each and every of said stills embodied and contained the characteristic and salient elements and features of the devices and inventions covered by the claims of United States Patent No. 1,285,200 which was issued under date of November 19, 1919, to the defendant as assignee of E. W. Isom, a copy of which said patent is attached hereto, marked Ex-

hibit "D," and is made a part hereof. The plaintiff further alleges on information and belief that said cracking stills constructed as hereinbefore alleged in accordance with the design and with the general idea of said patent No. 1,285,200, produced during the period of time hereinbefore mentioned a large part, if not all, of the commercial production of the defendant Sinclair Refining Company of gasoline and of allied petroleum products resulting from the cracking of petroleum oils, and that the inventions of said patent No. 1,285,200 have been the basis of such commercial production of the defendant during said period of time.

6. The plaintiff cannot safely proceed to the trial of said action at law which is pending on the law side of this Court and cannot prove with any degree of accuracy and completeness at the trial of said action at law the damages which the plaintiff has suffered by reason of the breach of the contract which is in suit in said action at law without:

(a) The full discovery by the defendant as to whether or not it constructed and operated during the period of time hereinbefore specified any such cracking still or cracking stills as hereinbefore mentioned and denied.

[fol. 7] (b) The full discovery by the defendant as to the number, if any, of such cracking stills, the date each such cracking still was constructed and the period of time within the period of time hereinbefore specified each such cracking still was operated by the defendant;

(c) An inspection of the drawings showing the particular character, type and construction of any such cracking still or cracking stills constructed, used and operated by the defendant as hereinbefore alleged;

(d) The quantity of gasoline (in barrels) and of other allied petroleum products resulting from the cracking of petroleum oils in any such cracking still or cracking stills operated during the period of time hereinbefore specified by the defendant as hereinbefore alleged; and

(e) The amount of petroleum oils charged into any such cracking still or cracking stills constructed and operated

during the period of time hereinbefore specified by the defendant as hereinbefore alleged.

7. The plaintiff further alleges on information and belief that the facts hereinbefore referred to are peculiarly and exclusively within the knowledge of the defendant; that the documents hereinbefore mentioned are exclusively and solely in the possession of the defendant; that said facts and documents are material to the support of the plaintiff's case as stated in said declaration in said action at law which is pending on the law side of this Court and that said facts and said documents are not available to the plaintiff without the assistance of the equity side of this Court, and more particularly the plaintiff alleges on information and belief that the evidence to prove the amounts of petroleum oils charged into any such cracking still or cracking stills constructed and operated by the defendant as hereinbefore alleged and to prove the amounts of gasoline and of allied petroleum products resulting from the cracking of petroleum oils in any such cracking still or cracking stills, is contained in the books, records and papers of the defendant corporation; that the production of such books, records [fol. 8] and papers at the trial of said action at law which is pending on the law side of this Court in response to a subpœna duces tecum would not enable the plaintiff safely to prosecute said action at law by reason of the fact that the entries and notations in such books, records and papers cover the tremendous production of gasoline and of allied petroleum products of the defendant corporation during a period of approximately ten years; that said entries and notations are so numerous and so complicated that the plaintiff, its attorneys or other representatives, could not possibly ascertain definitely in a practical and correct manner and within any reasonable length of time, and especially not within the length of time which will be required for the trial of said action at law, either the amounts of petroleum oils charged into said cracking stills, or the production of gasoline or of allied petroleum products resulting from the cracking of such petroleum oils.

8. To the end, therefore, that the plaintiff may have the discovery of all and singular the matters and things herein set forth and that the defendant may make full, true, direct

and perfect answer to the several interrogatories hereinafter set forth as by the note hereinafter written, the defendant is required to answer said interrogatories and to attach to the answers to said interrogatories copies of the various drawings, papers and other documents which the defendant is requested in and by said interrogatories to produce for inspection by the plaintiff, said interrogatories being as follows:

INTERROGATORIES

1. Has the defendant during the period from November 19, 1919, to the date of the filing of said declaration in said action at law, in its commercial production of gasoline and of other petroleum products resulting from the cracking of petroleum oils, operated and used a cracking still or cracking stills embodying or containing the characteristics and salient elements of the devices and inventions covered by the claims of United States Patent No. 1,285,200, issued under date of November 19, 1919, to the defendant as assignee of E. W. Isom?

[fol. 9] 2. If an affirmative answer is given to Interrogatory No. 1, has the defendant blue prints and/or tracings and/or other drawings of the cracking still or cracking stills referred to in Interrogatory No. 1 and so operated and used by the defendant?

3. If an affirmative answer is given to Interrogatory No. 2, produce such blue prints and/or tracings and/or other drawings referred to in Interrogatory No. 2.

4. If a negative answer is given to Interrogatory No. 1, has the defendant during the period from November 19, 1919, to the date of the filing of said declaration in said action at law, in its commercial production of gasoline and of other petroleum products resulting from the cracking of petroleum oils, operated and used a cracking still or cracking stills at a pressure of about or more than 100 lbs. and at temperatures between 600° and 900° F., and in which the primary and essential elements in combination consisted of a furnace having heating flues therein with substantially vertical heating pipes extending through said heating flues, which said pipes were connected separately from both ends to a supply tank containing the petroleum

oil to be cracked, with a liquid forcing means in one of said connections from the supply tank to the bottom of the said heating pipes for the purpose of rapidly forcing the charging stock in the supply tank, from said tank through said tubes and back into said tank?

5. If an affirmative answer is given to Interrogatory No. 4, has the defendant blue prints and/or tracings and/or other drawings of such cracking still or cracking stills so used and operated?

6. If an affirmative answer is given to Interrogatory No. 5, produce such blue prints and/or tracings and/or other drawings.

7. If a negative answer is given to Interrogatory No. 1, has the defendant during the period from November 19, 1919, to the date of the filing of said declaration in said action at law, in its commercial production of gasoline and of other petroleum products resulting from the cracking of petroleum oils, operated and used a cracking still or cracking stills at a pressure of about or more than 100 lbs. and at temperatures between 600° and 900° F., in which the [fol. 10] primary and essential elements in combination consisted of a furnace having heating flues therein with vertical heating pipes extending through said heating flues, which said pipes were connected separately from both ends to a supply tank containing the petroleum oil to be cracked, with a liquid forcing means in one of said connections from the supply tank to the bottom of the said heating pipes for the purpose of rapidly forcing said charging stock through said connections, heating pipes and supply tank?

8. If an affirmative answer is given to Interrogatory No. 7, has the defendant blue prints and/or tracings and/or other drawings of such cracking still or cracking stills so used and operated?

9. If an affirmative answer is given to Interrogatory No. 8, produce such blue prints and/or tracings and/or other drawings.

10. If a negative answer is given to Interrogatory No. 1, has the defendant during the period from November 19, 1919, to the date of the filing of said declaration in said action at law, in its commercial production of gasoline and of other

petroleum products resulting from the cracking of petroleum oils, operated and used a cracking still or cracking stills at a pressure of about or more than 100 lbs. and at temperatures between 600° and 900° F., in which the primary and essential elements in combination consisted of a furnace having heating flues therein with substantially vertical heating pipes extending through said heating flues, which said pipes were connected separately from both ends to a supply tank containing the petroleum oil to be cracked, with a liquid forcing means in one of said connections from the supply tank to the bottom of the said heating pipes for the purpose of rapidly forcing the petroleum oil in the supply tank, from said tank through said tubes and back into said tank with the addition of a pipe extending from and affixed to the inside of the opening in the end of and near the bottom of the supply tank, through which the oil from the heating pipes was returned to such supply tank—said pipe extending from such opening approximately in a straight line to a point substantially toward the further end of said supply tank?

11. If an affirmative answer is given to Interrogatory [fol. 11] No. 10, has this defendant blue prints and/or tracings and/or other drawings of such still or stills?

12. If an affirmative answer is given to Interrogatory No. 11, produce such blue prints and/or tracings and/or other drawings.

13. If the answer to any one or more of the Interrogatories numbered 1, 4, 7 and 10 is in the affirmative, state how many of each type of such cracking stills have been so commercially operated by the defendant and the period of time covered by the operation of each still of each such type.

14. Furnish a statement showing by years for the period of time indicated herein above in Interrogatories 1, 4, 7 and 10, the total amounts of (a) gasoline, (b) fuel oil, (c) lubricating oil, and (d) any other commercial products, classified, produced by the defendant in the commercial operation of any such cracking still or cracking stills as herein above defined and described, the use and operation of which has been admitted by this defendant in any answer to any preceding interrogatory.

15. Furnish a statement showing by years for the period of time herein above indicated, namely, from November 19, 1919, to the date of the filing of said declaration in said action at law, the amounts of charging stock (in barrels) which have been introduced by the defendant in its commercial operation into any such cracking still or cracking stills as herein above described and defined, the commercial use of which has been admitted by this defendant in answer to any preceding interrogatory.

Wherefore, being without adequate remedy at law or otherwise save by the interposition of this Honorable Court sitting in equity, the plaintiff, Jenkins Petroleum Process Company, respectfully prays as follows:

1. That a writ of subpœna be issued directed to the defendant, Sinclair Refining Company, commanding said defendant at a time certain therein named personally to appear before this Honorable Court and then and there full, true, direct and perfect answer to make to each of the several interrogatories herein above set forth, and to attach to the answers to said interrogatories copies of the [fol. 12] various drawings, papers and other documents therein called for, the same to be open to the inspection of your orator.

2. That the plaintiff, Jenkins Petroleum Process Company, have such other, further and general relief as the nature of the case may require and as this Honorable Court may term proper.

Philip G. Clifford, Solicitor for the Plaintiff. C. Stanley Thompson, Rush H. Williamson, Frederick Schafer, Washington, D. C., of Counsel.

Note

The defendant Sinclair Refining Company, a corporation, is required to answer the above interrogatories under oath, the answers to be verified by an executive officer of said defendant corporation having knowledge of the facts therein inquired about.

Philip G. Clifford, Solicitor for the Plaintiff.

[fols. 13 & 13-1] EXHIBIT "A" TO BILL

IN UNITED STATES DISTRICT COURT, DISTRICT OF MAINE

At Law. No. —

JENKINS PETROLEUM PROCESS COMPANY, a Corporation, Plaintiff,

vs.

SINCLAIR REFINING COMPANY, a Corporation, Defendant

Now comes the Plaintiff, Jenkins Petroleum Process Company, a corporation legally existing by law and having a place of business in Chicago, in the County of Cook and State of Illinois, and pursuant to the mandate of the Circuit Court of Appeals of the First Circuit, dated July 30, 1929, and to the permission granted by order of this court dated the twenty-eighth day of August, 1929, hereby amends its bill of complaint by substituting for the same a declaration in an action at law for the breach of a certain contract of October 2, 1916, mentioned in said mandate, as follows: in a plea of the case for that

(1) Jenkins Petroleum Process Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and it is a resident of and is domiciled in the State of Wisconsin;

That the Defendant, Sinclair Refining Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and it is a resident of and is domiciled in the State of Maine; that said Defendant corporation originally was incorporated, and for many years it carried on business, under the name of Cudahy Refining Company; that by a certificate of amendment to its articles of incorporation filed the twenty-fifth day of January, [fol. 13-2] 1917, the name of the Defendant corporation was changed from Cudahy Refining Company to Sinclair Refining Company;

That the amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of three thousand dollars ($3,000);

That prior to the second day of October, 1916, Ulysses S. Jenkins, T. S. Black, and W. S. Black, all of Chicago, Illi-

nois, and A. G. Maguire of Milwaukee, Wisconsin, had subscribed to all the capital stock of the Plaintiff corporation and had caused to be executed the articles of incorporation of the Plaintiff corporation as required by the laws of the State of Wisconsin, and that subsequent to the second day of October, 1916, to wit: on the ninth day of October, 1916, the certificate of incorporation of the Plaintiff corporation was duly issued by the Secretary of State of the State of Wisconsin, and on the sixteenth day of October, 1916, the certificate of incorporation and the articles of incorporation of the Plaintiff corporation were duly recorded in the County of Milwaukee in the State of Wisconsin;

That thereafter said Ulysses S. Jenkins, T. S. Black, W. S. Black and A. G. Maguire assigned to said Plaintiff all their right, title and interest in and to the contract hereinafter referred to, and dated October 2, 1916, and said Plaintiff accepted said assignment and ratified said contract;

That on the second day of October, 1916, in the said City of Chicago, the said Sinclair Refining Company under its then name, Cudahy Refining Company as above set forth, in consideration of the hereinafter stated promises and agreements of the Plaintiff's assignors, as hereinbefore alleged, entered into a contract in writing with the said Ulysses S. Jenkins, T. S. Black, W. C. Black, and A. G. Maguire, acting under the name of Jenkins Petroleum Process Company, the rights of which said individuals in and to said contract have been assigned to said Jenkins Petroleum Process Company as above stated, whereby the said Plaintiff's assignors as above set forth, in consideration of the hereinafter stated promises and agreements of the said Defendant made its then name of Cudahy Refining Company as hereinbefore alleged, promised and agreed to loan to said Defendant a certain experimental still to be shipped to Coffeyville, Kansas, and further agreed that [fol. 13-3] said Ulysses S. Jenkins of Chicago should go to Coffeyville, Kansas, to instal- said still and should remain in an advisory capacity throughout the entire course of experimental work to be carried on by the experts of said Cudahy Refining Company; and whereby the said Defendant under its then name of Cudahy Refining Company in consideration of the hereinbefore stated promises and

agreements of the Plaintiff's assignors, as above stated, promised and agreed that any improvements, whether of a mechanical nature or in the process which might be developed as the result of the work of its engineers and experts in familiarizing themselves with the Jenkins apparatus and process, on which an application for Letters Patent of the United States was then pending, should accrue to the said Jenkins Petroleum Process Company, and that said Defendant should cause its employees carrying on such experimental work to execute applications for patents of the United States and any other countries to protect any such improvements, and should assign said applications together with the improvements which they would be intended to protect to said Jenkins Petroleum Process Company;

That the said Plaintiff and the Plaintiff's assignors have fulfilled and completed all the promises and agreements to be carried out by it or its assignors under said contract in accordance with the terms thereof as above stated; that the said Defendant has not fulfilled any of the promises and agreements made by it under said contract as above set forth, but has refused to fulfill its said promises and agreements, though repeatedly requested thereto by said Plaintiff, but has applied for and procured Letters Patent of the United States on improvements of a mechanical nature and in the process which said improvements were developed as a result of the work of its engineers and experts in familiarizing themselves with the Jenkins apparatus and process, and though requested thereto has refused to assign said applications or said Letters Patent of the United States together with the improvements which they protect to said Plaintiff, and has widely, extensively and profitably used said improvements in connection with its business and has failed and refused to compensate said Plaintiff for said [fol. 13-4] wide, extensive and profitable use to the great damage of the Plaintiff, as it says, the sum of five million dollars ($5,000,000), which shall be made to appear with other due damages.

2. Also for that Jenkins Petroleum Process Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and is a resident of and is domiciled in the State of Wisconsin.

That the Defendant, Sinclair Refining Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and is a resident of and is domiciled in the State of Maine; that said corporation originally was incorporated and for many years it carried on business under the name Cudahy Refining Company; that by a certificate of amendment to its Articles of Incorporation filed January 25, 1927, the name of the Defendant corporation was changed from Cudahy Refining Company to Sinclair Refining Company.

That the amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of $3,000.00.

That during June, 1916, Ulysses S. Jenkins, T. S. Black, and W. C. Black, all then residents of Chicago, in the State of Illinois, and A. G. Maguire, then a resident of Milwaukee, in the State of Wisconsin, associated themselves in business for the purpose of developing and using certain inventions of the said Ulysses S. Jenkins relative to treating petroleum products; that for that purpose the said Jenkins conveyed to the said T. S. Black, W. C. Black, and A. G. Maguire an interest in the said inventions and in all patents to be issued thereon; that, thereafter, the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, for the purpose of utilizing the said inventions and patent rights, undertook the organization of the Plaintiff corporation; that in July, 1916, said Jenkins, T. S. Black, W. C. Black and A. G. Maguire subscribed to the capital stock of the Plaintiff corporation; that, under date of September 25, 1916, said Jenkins, T. S. Black, W. C. Black and A. G. Maguire caused to be executed the Articles of Incorporation of the Plaintiff corporation as required by the laws of the State of Wisconsin; that on the 9th day of October, 1916, the Certificate of Incorporation of the Plaintiff corporation was duly issued by the Secretary of [fol. 13-5] State of the State of Wisconsin, and on the 16th day of October, 1916, the said Certificate of Incorporation and the Articles of Incorporation of the Plaintiff corporation were duly recorded in the County of Milwaukee, in the State of Wisconsin; that, thereafter, the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, in pursuance of their previous agreement and undertaking conveyed to the Plaintiff corporation all their interest in

and to the said inventions of the said Jenkins and in and to all applications for Letters Patent therefor and in and to all patents which thereafter might be issued in connection with the said inventions or in connection with any improvements or developments thereof and in and to their certain contract of October 2, 1916, which is hereinafter set forth, and said Plaintiff acepted said assignment and ratified said contract.

That in or about July, August and September, 1916, the Defendant, Sinclair Refining Company, under its then name of Cudahy Refining Company, applied to the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire for an opportunity to investigate the said Jenkins Process of treating petroleum, and for its officers and representatives to acquire full full knowledge and information regarding the said Jenkins process and apparatus, the applications for patents thereon then pending, and an experimental still which said Ulysses S. Jenkins had constructed, and to enter into a contract with said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, or with the Plaintiff corporation, to purchase the right to use said process in and about the Defendant's treatment of petroleum products.

That, thereupon, on or about the second day of October, 1916, at Chicago, in the State of Illinois, the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, acting under the name of Jenkins Petroleum Process Company, and the said Defendant, Sinclair Refining Company, acting under its then name of Cudahy Refining Company, entered into a certain contract and agreement in writing which was in words and figures as follows:

[fol. 13-6] Chicago, Illinois, October 2nd, 1916.

Cudahy Refining Company, Chicago, Illinois.

GENTLEMEN: Pursuant to our conversations and conferences relative to the Jenkins process of treating petroleum, it is understood that we are to loan you our experimental still to be shipped to Coffeyville, Kansas, so that your experts and engineers may have apparatus immediately available upon which to carry out experiments upon the Jenkins improved process upon your petroleum products.

It is further understood that Mr. Ulysses S. Jenkins, of Chicago, will go to Coffeyville, Kansas, to install the still

and will remain in an advisory capacity throughout the entire course of experimental work carried on by your experts, Mr. Jenkins' salary being $150.00 per month, and all expenses, including railroad expenses incurred by him in making trips to Chicago, rendered necessary by said experimental work, this to be paid by you.

It is further definitely understood and agreed between us that any improvements, whether of a mechanical nature, or in the process, which may be developed as the result of the work of your engineers and experts in familiarizing themselves with the Jenkins apparatus and process, shall accrue to the Jenkins Petroleum Process Company, and that you shall, so far as you are able to do, cause your employees carrying on such experimental work to execute applications for patents for the United States and any other countries to protect any such improvements, but at the expense of the Jenkins Petroleum Process Company, and to assign said applications, together with the improvements they are intended to protect, to the Jenkins Petroleum Process Company. This provision is of course rendered necessary by the fact that in the development of a process of this character, and particularly in its application to particular oils, many short cuts and improvements necessarily are developed by the experts entrusted with the carrying out of the process, which belong by right to their employer, and under the circumstances here involved, of course, to the Jenkins Petroleum Process Company, inasmuch as they are loaning you not only their experimental still, but also the services of Mr. Jenkins, the inventor himself.

It is further understood that all expenses in connection with the transportation of the still and incidental expenses shall be paid by you, and that as soon as your engineers and experts have carried on sufficient work with this still to thoroughly familiarize themselves with the process and [fol. 13-7] discover the best conditions under which to apply the process to your petroleum products, the still will be returned in good condition to us, and that Mr. Jenkins' salary will continue from the time the still is first shipped to Coffeyville, until such time as it is returned.

Yours very truly, Jenkins Petroleum Process Company, by A. G. Maguire, President.

This letter and agreement accepted and approved
Cudahy Refining Company, by W. H. Isom, Pres.

That pursuant to said contract of October 2, 1916, said Plaintiff's assignors as hereinbefore alleged, and said Plaintiff did in fact loan to the Defendant, Sinclair Refining Company, apparatus theretofore invented and constructed by the said Ulysses S. Jenkins, on which an application for Letters Patent of the United States then was pending; that the said Ulysses S. Jenkins went to the works of the said Defendant at Coffeyville, in the State of Kansas, and there erected the said apparatus; that the said Ulysses S. Jenkins spent a great part of his time at the plant of said Defendant, and fully informed the said Defendant and its employees and officers, as to the nature of the said inventions and discoveries, and fully advised the officers and employees of the said Defendant regarding the plans and ideas of the said Ulysses S. Jenkins for the further development and improvement of the said apparatus and process and fully instructed the said officers and employees in the art in which said process and apparatus were used and were to be used, and that in all respects the said Jenkins and said Plaintiff, and its officers and employees, fully carried out and performed all the terms and conditions of the said contract of October 2, 1916, on their part to be carried out and performed.

That on or about the tenth day of September, 1917, Edward W. Isom, who then was and for many years prior thereto continuously had been an employee of the Defendant and who had acquired said ideas and had obtained said instruction, information and advice from the said Ulysses [fol. 13-8] S. Jenkins and from other officers and employees of the Plaintiff, as aforesaid, surreptitiously and without the knowledge of the Plaintiff or of its officers or representatives, filed a certain application for Letters Patent of the United States, and, thereafter, without the consent of the Plaintiff, procured Letters Patent of the United States to be issued, under date of November 19, 1918, being Letters Patent, No. 1,285,200, a copy of which Letters Patent is hereto annexed and marked "Exhibit 1" and caused said Letters Patent to be assigned to the Defendant; that said apparatus and process described in the said Letters Patent, Exhibit 1, was developed as a result of said opportunities afforded to said Edward W. Isom and to other engineers and experts and employees of the said Defendant, to familiarize themselves with the said Jenkins' apparatus

and process, and of said instructions, information and advice given to said Edward W. Isom and to other engineers and employees of the Defendant by said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire and by the Plaintiff; that the said apparatus and process described in the said Letters Patent, Exhibit 1, embody the essential features of the said invention of said Ulysses S. Jenkins and disclose in addition thereto only improvements of a mechanical character and in the process of said invention of said Ulysses S. Jenkins; that in so far as the said apparatus and process described in the said Letters Patent, Exhibit 1, have merit and utility in the art, such merit and utility consist simply in improvements and adaptions in the said Jenkins apparatus and process; that the said apparatus constructed by the said Ulysses S. Jenkins remained in the possession of the said Defendant during all the time that the said Edward W. Isom was engaged in the preparation of the said apparatus and process described in the said Letters Patent, Exhibit 1, and the said Defendant has retained, and it now has in its possession, the said apparatus.

That the said Edward W. Isom at all times, in connection with the matters aforesaid, was acting entirely under the direction and control of the said Defendant.

That the said Defendant, regardless of its obligations under and in accordance with the terms of the said con- [fol. 13-9] tract of October 2, 1916, did not cause the said Edward W. Isom to assign his application for the said Letters Patent, Exhibit 1, or to turn over to the said Plaintiff the said improvements and process described in said Letters Patent, Exhibit 1, but, on the contrary thereof, the said Defendant caused the said Edward W. Isom to assign his said Letters Patent, Exhibit 1, to the said Defendant, and the said Defendant has failed and refused to assign said Letters Patent, Exhibit 1, to the Plaintiff, although repeatedly requested thereto by the said Plaintiff.

Wherefore, the said Plaintiff has in all respects fulfilled its promises and agreements by it to be performed under said contract of October 2, 1916, and the said Defendant has not performed its promises and agreements, but though requested thereto, has wholly refused to carry out the terms

and obligations of said contract of October 2, 1916, to be by it performed and has widely, extensively and profitably used said improvements in connection with its business and has failed and refused to compensate said Plaintiff for said wide and extensive and profitable use to the great damage of the Plaintiff, as it says, the sum of five million dollars ($5,000,000), which shall be made to appear with other due damage.

Dated August 29, 1929.

By Its Attorneys, C. Stanley Thompson, Philip G. Clifford.

[fol. 13-10] EXHIBIT "B" TO BILL

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF MAINE, SOUTHERN DIVISION

At Law. No. 1178

JENKINS PETROLEUM PROCESS COMPANY, Plaintiff,

v.

SINCLAIR REFINING COMPANY, Defendant

Motion of Plaintiff for Leave to Amend Its Declaration

And now, on this 15th day of May, 1930, comes the Plaintiff, the said Jenkins Petroleum Process Company, and asks leave of the Court to amend its declaration already filed in the above entitled cause, by adding to said declaration a third count in the form hereto annexed.

Jenkins Petroleum Process Company, by Philip G. Clifford, Its Attorney.

[fol. 13-11] 3. Also for that Jenkins Petroleum Process Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and is a resident of and is domiciled in the State of Wisconsin.

That the Defendant, Sinclair Refining Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and is a resident of and is domiciled in the State of Maine; that said corporation originally was incorporated and for many years it carried on business

under the name Cudahy Refining Company; that by a certificate of amendment to its Articles of Incorporation filed January 25, 1917, the name of the Defendant corporation was changed from Cudahy Refining Company to Sinclair Refining Company.

That the amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of $3,000.00.

That during June, 1916, Ulysses S. Jenkins, T. S. Black, and W. C. Black, all then residents of Chicago, in the State of Illinois, and A. G. Maguire, then a resident of Milwaukee, in the State of Wisconsin, associated themselves in business for the purpose of developing and using certain inventions of the said Ulysses S. Jenkins relative to treating petroleum products; that for that purpose the said Ulysses S. Jenkins conveyed to the said T. S. Black, W. C. Black, and A. G. Maguire an interest in the said inventions and in all patents to be issued thereon; that, thereafter, the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, for the purpose of utilizing the said inventions and patent rights, undertook the organization of the Plaintiff corporation; that in July, 1916, said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire subscribed to the capital stock of the Plaintiff corporation; that under date of September 25, 1916, said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire caused to be executed the Articles of Incorporation of the Plaintiff corporation as required by the laws of the State of Wisconsin; that on the 9th day of October, 1916, the Certificate of Incorporation of the Plaintiff corporation was duly issued by the Secretary of State of the State of Wisconsin, and on the 16th day of October, 1916, the said Certificate of Incorporation and the Articles [fol. 13-12] of Incorporation of the Plaintiff corporation were duly recorded in the County of Milwaukee, in the State of Wisconsin; that, thereafter, said Plaintiff took over and continued the business and affairs theretofore done in its name and in its behalf by said individuals as hereinafter alleged and said Plaintiff ratified the acts, including the making of that contract of October 2, 1916, which is hereinafter set forth, theretofore done in its name and in its behalf by said individuals as hereinafter alleged, and said Plaintiff ratified and adopted said contract of October 2, 1916.

That in or about July, August and September, 1916, the Defendant, Sinclair Refining Company, under its then name of Cudahy Refining Company, applied to the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire for an opportunity to investigate the said Jenkins Process of treating petroleum products, and for its officers and representatives to acquire full knowledge and information regarding the said Jenkins process and apparatus, the application for patents thereon then pending, and an experimental still which said Ulysses S. Jenkins had constructed, and to enter into a contract with said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, or with the Plaintiff corporation, to purchase the right to use said process in and about the Defendant's treatment of petroleum products.

That, thereupon, on or about the second day of October, 1916, at Chicago, in the State of Illinois, the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, acting in the name of and in behalf of Jenkins Petroleum Process Company, the said Plaintiff, which as the said Defendant then well knew then was in process of organization and incorporation as hereinbefore alleged, and the said Defendant, Sinclair Refining Company, acting under its then name of Cudahy Refining Company, entered into a certain contract and agreement in writing which was in words and figures as follows:

[fol. 13-13] Chicago, Illinois, October 2nd, 1916.

Cudahy Refining Company, Chicago, Illinois.

GENTLEMEN: Pursuant to our conversations and conferences relative to the Jenkins process of treating petroleum, it is understood that we are to loan you our experimental still to be shipped to Coffeyville, Kansas, so that your experts and engineers may have apparatus immediately available upon which to carry out experiments upon the Jenkins improved process upon your petroleum products.

It is further understood that Mr. Ulysses S. Jenkins, of Chicago, will go to Coffeyville, Kansas, to install the still and will remain in an advisory capacity throughout the entire course of experimental work carried on by your experts, Mr. Jenkins' salary being $150.00 per month, and all expenses, including railroad expenses incurred by him in

making trips to Chicago, rendered necessary by said experimental work, this to be paid by you.

It is further definitely understood and agreed between us that any improvements, whether of a mechanical nature, or in the process, which may be developed as the result of the work of your engineers and experts in familiarizing themselves with the Jenkins apparatus and process, shall accrue to the Jenkins Petroleum Process Company, and that you shall, so far as you are able to do, cause your employees carrying on such experimental work to execute applications for patents for the United States and any other countries to protect any such improvements, but at the expense of the Jenkins Petroleum Process Company, and to assign said applications, together with the improvements they are intended to protect, to the Jenkins Petroleum Process Company. This provision is of course rendered necessary by the fact that in the development of a process of this character, and particularly in its application to particular oils, many short cuts and improvements necessarily are developed by the experts entrusted with the carrying out of the process, which belong by right to their employer, and under the circumstances here involved, of course, to the Jenkins Petroleum Process Company, inasmuch as they are loaning you not only their experimental skill, but also the services of Mr. Jenkins, the inventor himself.

It is further understood that all expenses in connection with the transportation of the still and incidental expenses shall be paid by you, and that as soon as your engineers [fol. 13-14] and experts have carried on sufficient work with this still to thoroughly familiarize themselves with the process and discover the best conditions under which to apply the process to your petroleum products, the still will be returned in good condition to us, and that Mr. Jenkins' salary will continue from the time the still is first shipped to Coffeyville, until such time as it is returned.

Yours very truly, Jenkins Petroleum Products Company, by A. G. Maguire, President.

This letter and agreement accepted and approved.
Cudahy Refining Company, by W. H. Isom, Pres.

That the said word "Products" in the signature of the Plaintiff to the agreement above set forth was a typograph-

ical error and that it was the intent and purpose of the parties thereto that it should be signed with the correct name of this Plaintiff, viz.: Jenkins Petroleum Process Company, which then was in process of organization and incorporation as aforesaid.

That pursuant to said contract of October 2, 1916, said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, acting as hereinbefore alleged, and said Plaintiff did in fact loan to the Defendant, Sinclair Refining Company, apparatus theretofore invented and constructed by the said Ulysses S. Jenkins, on which an application for Letters Patent of the United States then was pending; that the said Ulysses S. Jenkins went to the works of the said Defendant at Coffeyville, in the State of Kansas, and there erected the said apparatus; that the said Ulysses S. Jenkins spent a great part of his time at the plant of said Defendant, and fully informed the said Defendant and its employees and officers as to the nature of the said inventions and discoveries, and fully advised the officers and employees of the said Defendant regarding the plans and ideas of the said Ulysses S. Jenkins for the further development and improvement of the said apparatus and process and fully instructed the said officers and employees in the art [fol. 13-15] in which said process and apparatus were used and were to be used, and that in all respects the said Ulysses S. Jenkins and said Plaintiff, and its officers and employees, fully carried out and performed all the terms and conditions of the said contract of October 2, 1916, on their part to be carried out and performed.

That on or about the tenth day of September, 1917, Edward W. Isom, who then was and for many years prior thereto continuously had been an employee of the Defendant and who had acquired said ideas and had obtained said instruction, information and advice from the said Ulysses S. Jenkins and from other officers and employees of the Plaintiff, as aforesaid, surreptitiously and without the knowledge of the Plaintiff or of its officers or representatives, filed a certain application for Letters Patent of the United States, and, thereafter, without the consent of the Plaintiff, procured Letters Patent of the United States to be issued, under date of November 19, 1918, being Letters Patent, No. 1,285,200, a copy of which Letters Patent is

hereto annexed and marked "Exhibit 1" and caused said Letters Patent to be assigned to the Defendant; that said apparatus and process described in the said Letters Patent, Exhibit 1, was developed as a result of said opportunities afforded to said Edward W. Isom and to other engineers and experts and employees of the said Defendant, to familiarize themselves with the said Jenkins' apparatus and process, and of said instructions, information and advice given to said Edward W. Isom and to other engineers and employees of the Defendant by said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire and by the Plaintiff; that the said apparatus and process described in the said Letters Patent, Exhibit 1, embody the essential features of the said invention of said Ulysses S. Jenkins and disclose in addition thereto only improvements of a mechanical character and in the process of said invention of said Ulysses S. Jenkins; that in so far as the said apparatus and process described in the said Letters Patent, Exhibit 1, have merit and utility in the art, such merit and utility consist simply in improvements and adaptations in the said Jenkins' apparatus and process; that the said apparatus constructed by the said Ulysses S. Jenkins remained in the possession of the said Defendant during all [fols. 13-16 & 14] the time that the said Edward W. Isom was engaged in the preparation of the said apparatus and process described in the said Letters Patent, Exhibit 1, and the said Defendant has retained, and it now has in its possession, the said apparatus.

That the said Edward W. Isom at all times, in connection with the matters aforesaid, was acting under the direction and control of the said Defendant.

That the said Defendant, regardless of its obligations under and in accordance with the terms of the said contract of October 2, 1916, did not cause the said Edward W. Isom to assign his application for the said Letters Patent, Exhibit 1, to the said Plaintiff or to turn over to the said Plaintiff the said improvements of a mechanical nature and in the process, described in said Letters Patent, Exhibit 1, but, on the contrary thereof, the said Defendant caused the said Edward W. Isom to assign his said Letters Patent, Exhibit 1, to the said Defendant, and the said Defendant has failed and refused to assign said Letters Patent, Ex-

hibit 1, to the Plaintiff, although repeatedly requested thereto by the said Plaintiff.

Wherefore, the said Plaintiff has in all respects fulfilled its promises and agreements by it to be performed under said contract of October 2, 1916, and the said Defendant has not performed its promises and agreements, but, though requested thereto, has wholly refused to carry out the terms and obligations of said contract of October 2, 1916, to be by it performed and has widely, extensively and profitably used said improvements in connection with its business and has failed and refused to compensate said Plaintiff for said wide and extensive and profitable use, to the great damage of the Plaintiff, as it says, the sum of five million dollars ($5,000,000), which shall be made to appear with other due damage.

[fol. 15] EXHIBIT "C" TO BILL

UNITED STATES OF AMERICA,
District of Maine:

UNITED STATES DISTRICT COURT, APRIL TERM, 1930

No. 1178

JENKINS PETROLEUM PROCESS COMPANY

vs.

SINCLAIR REFINING COMPANY

And the said Defendant comes and defends, etc., when, etc., and says that it never promised in manner and form as the Plaintiff in its Writ has declared against it and of this puts itself upon the country.

By Verrill, Hale, Booth & Ives, Defendant's Attorneys.

And the Plaintiff likewise.

By Philip G. Clifford, Plaintiff's Attorney.

And for a brief statement of special matter of defense to be used under the general issue pleaded, the said defendant further says:

1. The Plaintiff, and the individuals, Ulysses S. Jenkins, T. S. Black, W. C. Black, and A. G. Maguire, failed to perform their obligations under the agreement of October 2,

1916, in that they did not loan to defendant an experimental still which was immediately available for carrying out experiments upon defendant's petroleum products, as required by the first paragraph of the agreement; but instead loaned a still which was defective and inoperative and incapable of use for carrying out any experiments whatever upon defendant's petroleum products, so that defendant's experts and engineers were unable to carry out any experiments with said still on defendant's petroleum products.

2. Plaintiff and the said individuals further failed to perform their obligations under the second paragraph of the agreement of October 2, 1916, in that Ulysses S. Jenkins did not remain at Coffeyville in an advisory capacity [fol. 16] throughout the entire course of experimental work carried on by defendant's experts, and did not remain through any course of experimental work whatever, for the reason that the still was defective and incapable of use to carry out any such experimental work; instead, Jenkins, after proving that the still was defective and incapable of use for any experimental work, abandoned the still and left defendant's Coffeyville plant without the knowledge of defendant and never returned thereto.

3. Plaintiff, and the said individuals (Jenkins, T. S. Black, W. C. Black and Maguire), misrepresented the condition of the still in the agreement of October 2, 1916, as one which would be immediately available for carrying out experiments on defendant's petroleum products, and concealed from defendant the true condition of said still, which they knew to be defective and incapable of use for such experimentation.

4. Plaintiff abandoned the agreement of October 2, 1916, and its obligations thereunder. When Jenkins had shown that the experimental still was defective and not available for the experiments contemplated by the agreement, Jenkins abandoned the still and left defendant's Coffeyville refinery without the knowledge of defendant, and plaintiff did nothing further to make any apparatus immediately available for experiments, as required by the first paragraph of the agreement, and Jenkins made no further efforts whatever to assist in any experimental work, as required by the second paragraph of the agreement.

5. There was failure of consideration on the part of plaintiff for the agreement of October 2, 1916. The plaintiff failed to ship a still with which it was possible for defendant to demonstrate the Jenkins process upon defendant's petroleum products, and Jenkins did not remain at Coffeyville in an advisory capacity throughout any experimental work of the kind contemplated by the letter. Defendant had been fully informed about the Jenkins process and apparatus, without obligation or injunction of secrecy, prior to the agreement of October 2, 1916, when the four individuals (Jenkins, T. S. Black, W. C. Black and Maguire) were promoting the Jenkins process and seeking [fol. 17] to interest various refiners, including defendant, in it. Defendant required a demonstration of the process to determine if it was applicable to defendant's petroleum products, and it was for the purpose of obtaining an immediate demonstration that the still was to be shipped to Coffeyville to be there demonstrated by Jenkins. The consideration for the agreement, on plaintiff's part, was not the disclosure of the Jenkins process and apparatus, which had been previously disclosed without obligation, but the consideration for the agreement on plaintiff's part was the loaning of an experimental still which would be immediately available for carrying out experiments upon defendant's products, and the services of Jenkins in installing the still and in remaining in an advisory capacity throughout the entire courses of experimental work for demonstrating the process on defendant's products. In view of the inoperativeness and the worthlessness of the still, and the impossibility of carrying out experiments with it, and the failure of Jenkins to render the services contemplated, there was failure of consideration for the agreement on plaintiff's part.

6. Plaintiff and the four individuals (Jenkins, T. S. Black, W. C. Black and Maguire) misrepresented the Jenkins process to the defendant, and misrepresented the results that had been obtained with it, prior to the agreement of October 2, 1916, and at the time of said agreement. The said individuals represented the process as a revolutionary process for making gasoline, which would produce 100% gasoline from the oil treated, in which no objectionable carbon or coke would be formed, in which stratifica-

tion of the gases and vapors would take place in the still so that only gasoline vapors would be withdrawn therefrom, in which no permanent gas would be permitted to escape from the still, in which advantage was taken of the law of mass action, and which could be continued indefinitely without the necessity of shutting down the still for cleaning; and said individuals represented the process as one which had been fully demonstrated by tests carried out before eminent engineers; whereas the said individuals knew that the process had not been so demonstrated, and [fol. 18] various features of the process, represented as having been so demonstrated, were in fact incapable of such demonstration.

7. No improvements were made by defendant or its engineers or experts of the kind contemplated in the agreement of October 2, 1916. This agreement contemplated experimental work to demonstrate the Jenkins process on defendant's petroleum products, and the improvements contemplated by the agreement were improvements developed as a result of such experimental work. Since the still was defective and incapable of use for any experimental work, and since no experimental work was or could be carried out with it, there were not, and could not have been, any such improvements as were contemplated by the agreement, and consequently there could be no improvements to assign.

8. Defendant obtained no benefit or advantage from the agreement of October 2, 1916, nor from anything done pursuant thereto. The full and complete disclosure of the Jenkins process and apparatus had been made to defendant prior to said agreement, without obligation and without injunction of secrecy, as a part of the public promotion of the Jenkins process. The experimental work contemplated by the agreement, for which the still was to be "immediately available," and which was to demonstrate the Jenkins process on defendant's products, was never carried out. The information which defendant desired to obtain from said experimental demonstration was not obtained. No benefit was derived from Jenkins' futile effort to erect the still and his demonstration of its inoperative condition. Defendant paid Jenkins' salary and other expenses as provided in the agreement but obtained no benefit therefrom. No advantage accrued to the defendant therefore from

the agreement. It had previously obtained full information regarding the Jenkins process and apparatus; as a part of the public promotion and exploitation of the Jenkins process; and it obtained no additional information under the agreement. The experimental still, after its inoperativeness had been demonstrated, and after it had been abandoned by Jenkins, was placed in defendant's storehouse at Coffeyville, and was never again used by defend- [fol. 19] ant, but held subject to the orders of the said Jenkins or plaintiff, and no request for its return was made by Jenkins or by plaintiff.

9. The invention of the Isom patent No. 1,285,200 is not an improvement on the Jenkins process and apparatus, and is not an improvement, modification or development of any alleged discoveries, inventions and processes of said Jenkins; but, on the contrary, the invention of such Isom patent is an improvement, modification and development of what was well known in the art long prior to any alleged invention of said Jenkins, and of processes and apparatus with which Isom was familiar before he learned of the Jenkins process and apparatus and before Jenkins' alleged invention had been made.

10. The process and apparatus of the Isom patent operate upon different principles from the Jenkins process and apparatus. The principles of operation of the Isom invention are based on the prior art processes and apparatus, known to Isom prior to any knowledge of the Jenkins process and apparatus. The Isom invention is not an improvement of the kind contemplated by the agreement of October 2, 1916, but is a wholly new and distinct invention made by Isom independently of and prior to knowledge of the Jenkins ap-aratus and process and based on wholly different principles of operation.

11. The apparatus and process of the Isom patent No. 1,285,200 are wholly different in principle, construction and mode of operation from anything alleged to have been disclosed to the defendant by the said individuals (Jenkins, T. S. Black, W. C. Black and Maguire,) or by the plaintiff, and do not embody any ideas acquired, or information or instructions gained, from said individuals or from plaintiff.

12. The apparatus and process of the Isom patent No. 1,285,200 were not developed as a result of the work of Isom or of defendant's engineers and experts in familiarizing themselves with the Jenkins apparatus and process, but on the contrary the said Isom invention was made independently of, and prior to, knowledge of the Jenkins process and apparatus.

[fol. 20] 13. The apparatus and process of the Isom patent No. 1,285,200 were independently invented by Edward W. Isom prior to any knowledge of the Jenkins apparatus and process, and prior to the alleged invention by Jenkins of said Jenkins apparatus and process. The said Edward W. Isom was a skilled mechanical engineer working in the art of cracking petroleum and was familiar with numerous processes and apparatus for cracking petroleum and had conceived the process and apparatus of his patent No. 1,285,200 long prior to the earliest date of conception by Jenkins of the Jenkins process and apparatus. Isom's invention had its origin in the prior art cracking processes and apparatus with which Isom was familiar before Jenkins' invention had been made. Isom's invention was made in an attempt to overcome the difficulties of the prior art cracking processes and apparatus. Since Isom's invention is of earlier date than that of Jenkins, it cannot be an improvement of the kind contemplated by the agreement of October 2, 1916.

14. Defendant denies that it applied to Ulysses S. Jenkins, T. S. Black, W. C. Black and A. C. Maguire for an opportunity to investigate the Jenkins process, and for its officers and representatives to acquire full knowledge and information regarding the said Jenkins process and apparatus and the Jenkins applications for patent and the Jenkins experimental still, and denies that it applied to said individuals to enter into a contract with them or with the plaintiff corporation to purchase the right to use the Jenkins process, and denies that the agreement of October 2, 1916, was thereupon entered into. Defendant asserts, on the contrary, that it was the said individuals and particularly the said Jenkins and W. C. Black, then in defendant's employ, who sought to interest defendant, and other oil refiners, in the Jenkins process, as a part of their cam-

paign of public promotion and exploitation of the Jenkins process; and defendant asserts that the said individuals freely and fully disclosed the Jenkins process and apparatus to defendant and to other oil refiners, without obligation, and without injunction of secrecy, as a part of their campaign of public promotion and exploitation, and that such [fol. 21] full and free disclosure had been made prior to the agreement of October 2, 1916, and was not any part of the consideration for that agreement. Defendant requested a demonstration of the Jenkins process and apparatus in order that it might ascertain whether the Jenkins process and apparatus would accomplish the results claimed for it by said individuals, and in order to determine whether defendant's petroleum products could be successfully treated thereby. Two unsuccessful attempts were made by the said individuals to demonstrate the Jenkins process and apparatus to defendant, prior to the agreement of October 2, 1916, and said attempts at demonstration were made without obligation or injunction of secrecy. Both attempts failed, and the second attempt resulted in the burning of the building in which the attempted demonstration was made. It was only after the full and free disclosure of the Jenkins process and apparatus to defendant, and after two unsuccessful attempts to demonstrate the said process and apparatus to defendant, and only when the still was to be shipped to defendant's plant so that experiments on defendant's petroleum products might be made by defendant's experts and engineers, under Jenkins' supervision, that the agreement of October 2, 1916, was entered into; and this agreement had to do only with the experimental work to be carried out, and any improvements resulting therefrom. No experimental work was or could be carried out, and no improvements resulted or could result therefrom.

15. Defendant denies the allegations of counts 2 and 3 of plaintiff's declaration that Jenkins, while at defendant's Coffeyville refinery and subsequent to the agreement of October 2, 1916, fully informed the defendant and its employees and officers as to the nature of his inventions and discoveries, and denies that Jenkins fully advised the officers and employees of the defendant regarding the plans and ideas of the said Jenkins for the further development and improvement of his apparatus and process, and denies

that said Jenkins fully instructed the said officers and employees of defendant in the art in which said process and [fol. 22] apparatus were to be used. Defendant asserts the fact to be that the complete and full disclosure of the Jenkins process and apparatus had been made to defendant prior to the agreement of October 2, 1916, without obligation, and that there was no further information or advice or instructions received by defendant or its officers and employees from said Jenkins or from plaintiff subsequent to the agreement of October 2, 1916, except the information that the Jenkins experimental still was defective and incapable of use for the experimental demonstration which the agreement provided for.

16. Defendant denies that plaintiff has been damaged by any failure or refusal of defendant to perform any of the obligations of said agreement of October 2, 1916. Defendant asserts that it has fully performed its obligation under said agreement, and that it has been damaged by the failure of plaintiff and of the four individuals (Jenkins, T. S. Black, W. C. Black and Maguire) to perform their obligations under the agreement. Defendant paid all expenses in connection with the transportation and erection of the worthless still, and defendant paid Jenkins' salary of $150 per month and all his expenses, as provided in the agreement; and defendant furnished material and equipment for the erection of the still at its Coffeyville refinery and paid the salaries of employees and workmen who assisted Jenkins in erecting the still and in demonstrating its worthlessness. All these expenses defendant paid, to its damage, without being able to carry out any experiments with the Jenkins still upon its petroleum products, and without receiving any assistance from Jenkins in any experimental work, as contemplated by the agreement. Plaintiff has suffered no damage through the loan of the worthless still and the failure of the experiments and demonstration contemplated by the agreement, but defendant has suffered damages through expenditures made in demonstrating the worthlessness of the still loaned by plaintiff.

17. And defendant further says that plaintiff's cause of action is barred by the statute of limitations, for the reason that the cause of action set forth in Counts 1 and 2 of de-

[fols. 23 & 24] fendant's declaration is a different cause of action from that set forth in plaintiff's original bill of complaint, and a cause of action pleaded for the first time more than six years after it occurred.

18. Defendant further says that plaintiff's cause of action under the agreement of October 2, 1916, is barred by Section 1773 of the Wisconsin statutes, under which plaintiff is incorporated, which statutes provide as follows:

"No such corporation shall transact business with any others than its members until at least one-half of its capital stock shall have been duly subscribed and at least 20% of its said capital stock actually paid in; and if any obligation shall be contracted in violation hereof, the corporation offending shall have no right of action thereon."

And the defendant says that not so much as 20% of the capital stock of the plaintiff corporation had been actually paid in on October 2, 1916.

EXHIBIT "D" TO BILL

(Here follows Exhibit "D" to Bill, side folios 25 to 25-6, Inc.)

E. W. ISOM.

ART OF CRACKING HYDROCARBONS.

APPLICATION FILED SEPT. 10, 1917.

1,285,200.

Patented Nov. 19, 1918.

4 SHEETS—SHEET 1

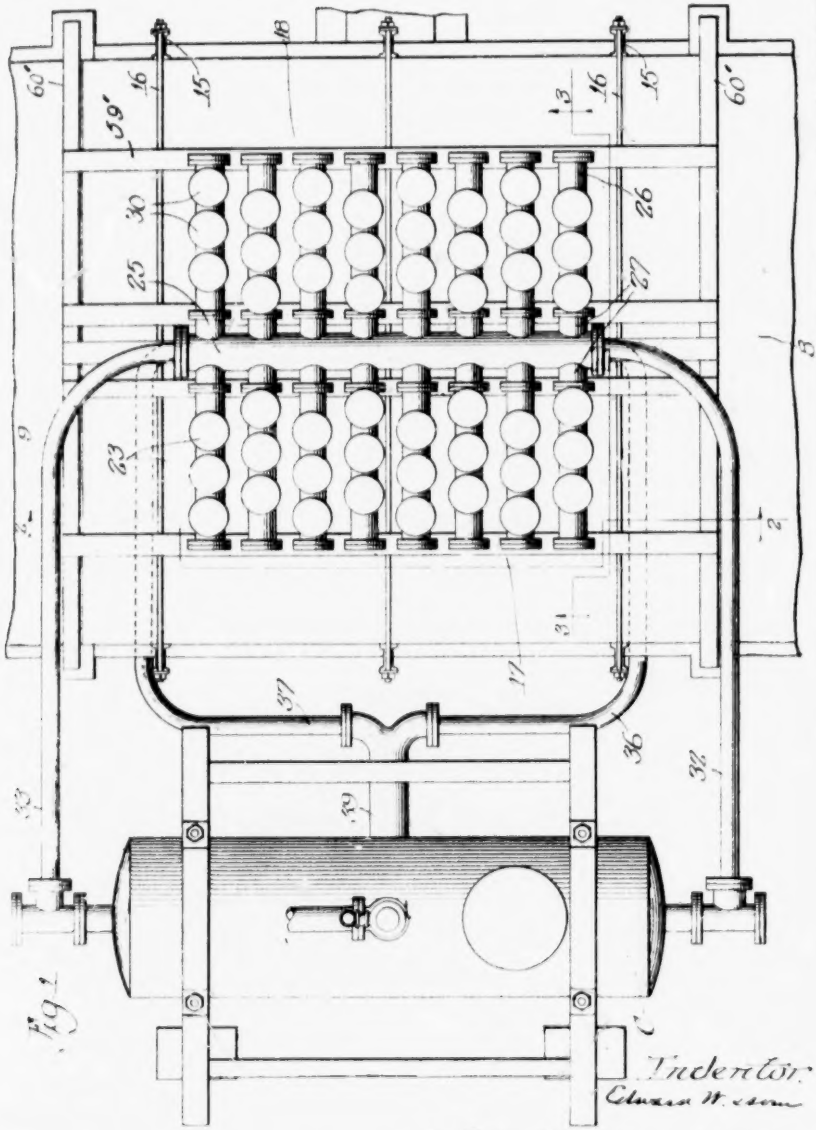

Fig. 1.

Inventor:
Edward W. Isom
By Redwood Gibbon Davis & Morse.
Attys.

25-1

E. W. ISOM.

ART OF CRACKING HYDROCARBONS.

APPLICATION FILED SEPT. 10, 1917.

1,285,200.

Patented Nov. 19, 1918.

4 SHEETS—SHEET 2.

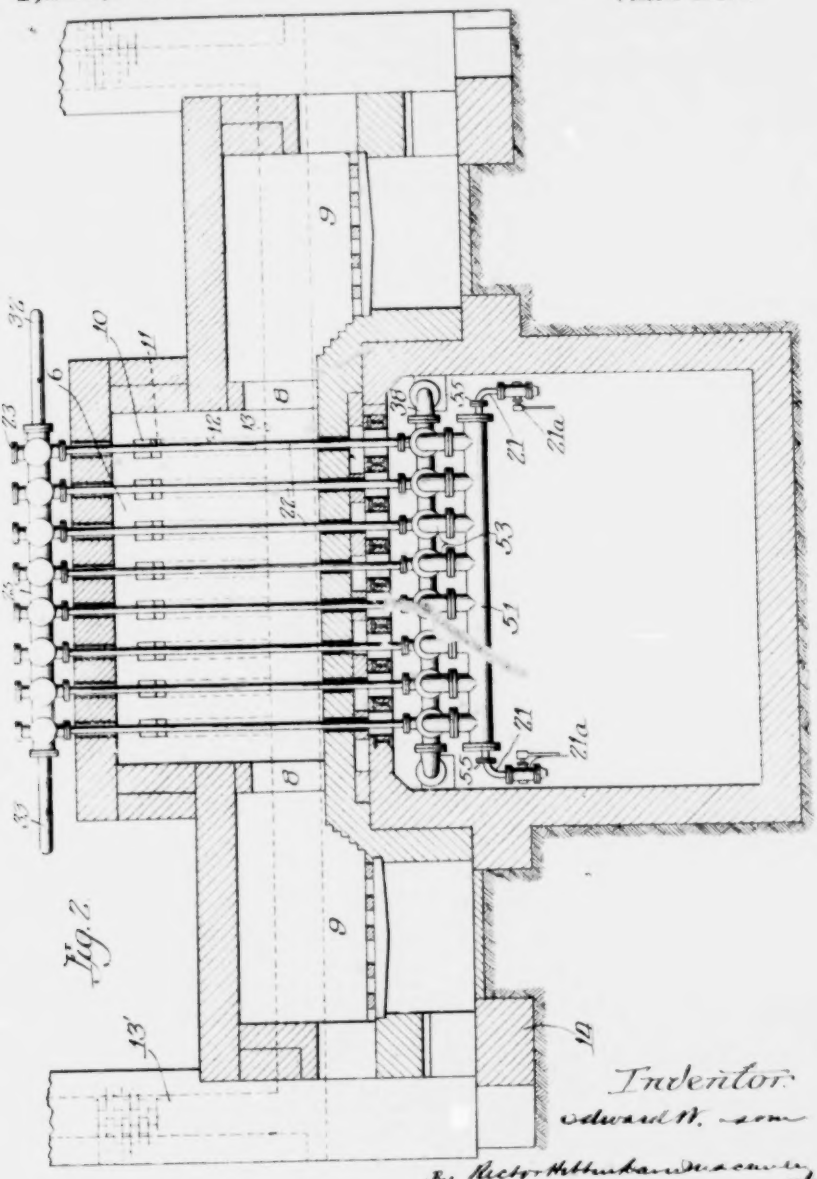

Fig. 2.

Inventor.

Edward W. Isom

By Victor Hibbard & Macauley

Attys

25-2

E. W. ISOM.

ART OF CRACKING HYDROCARBONS.

APPLICATION FILED SEPT. 10, 1917.

1,285,200.

Patented Nov. 19, 1918.

4 SHEETS—SHEET 3.

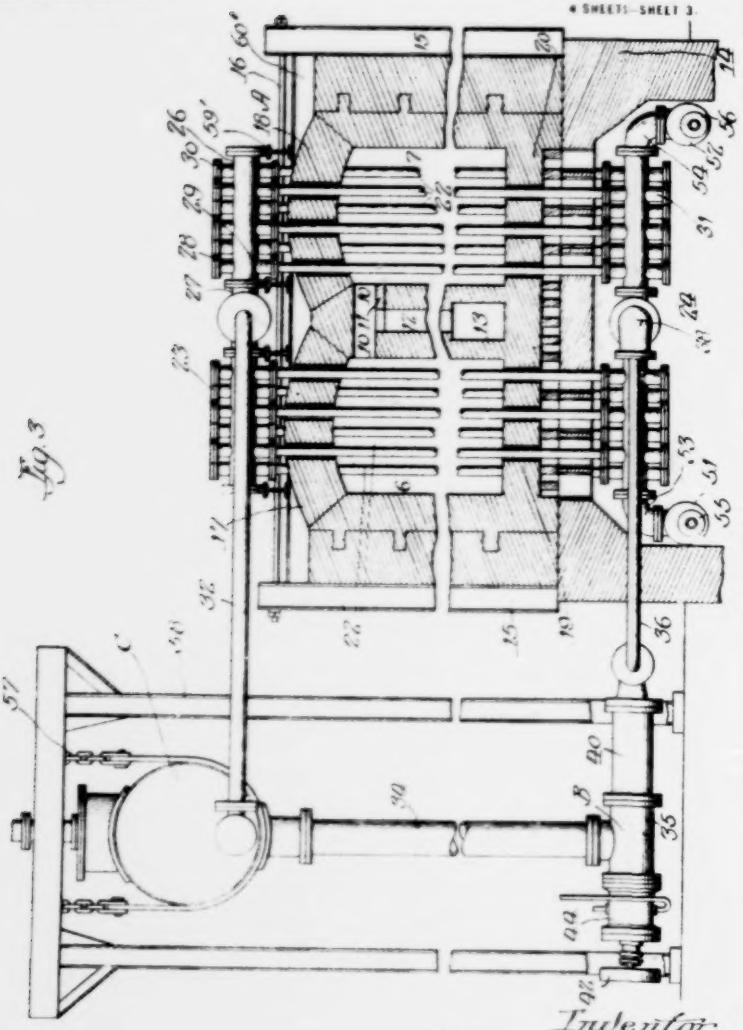

Fig. 3

Inventor

Edward W. Isom

By Kerr Hibben Davis Mackey

Attys

25-3

E. W. ISOM.

ART OF CRACKING HYDROCARBONS.

APPLICATION FILED SEPT. 10, 1917.

1,285,200.

Patented Nov. 19, 1918.

4 SHEETS—SHEET 4.

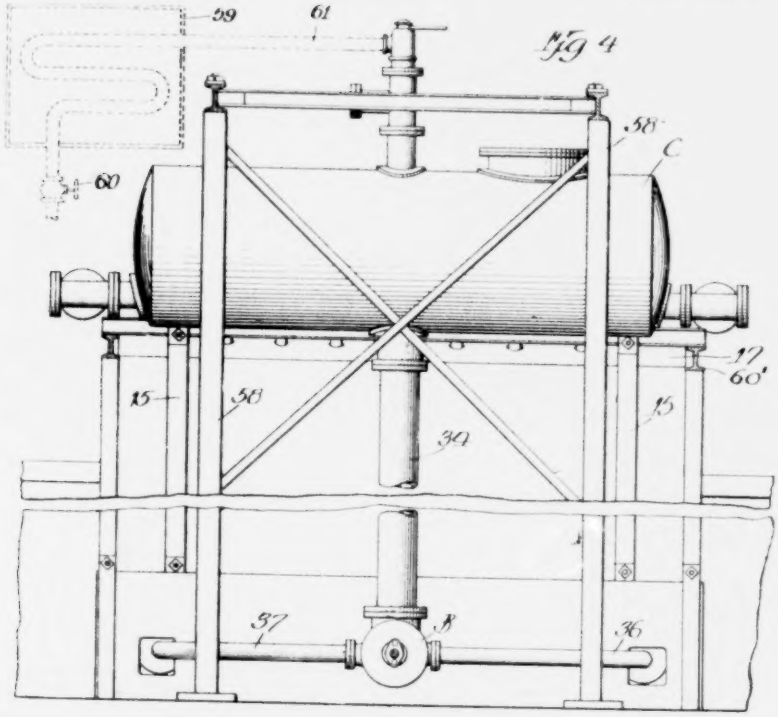

Fig. 4.

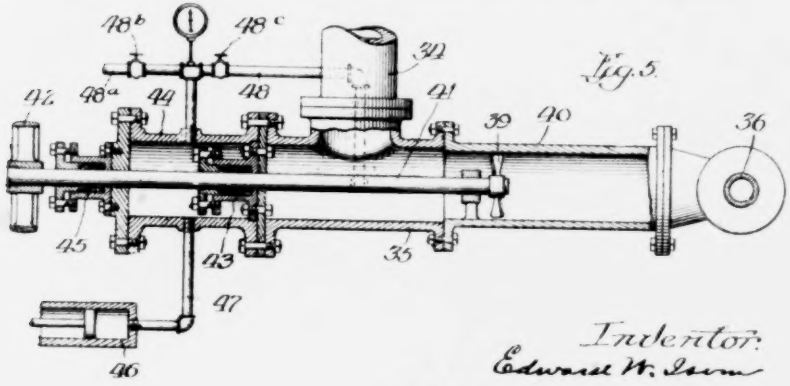

Fig. 5.

Inventor:
Edward W. Isom
By Rector Hibben Davis & Macauley
Attys

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UNITED STATES PATENT OFFICE.

EDWARD W. ISOM, OF CHICAGO, ILLINOIS, ASSIGNOR TO SINCLAIR REFINING COMPANY, OF CHICAGO, ILLINOIS, A CORPORATION OF MAINE.

ART OF CRACKING HYDROCARBONS.

1,285,200. Specification of Letters Patent. Patented Nov. 19, 1918.

Application filed September 10, 1917. Serial No. 190,429.

To all whom it may concern:

Be it known that I, EDWARD W. ISOM, a citizen of the United States, residing at Chicago, county of Cook, and State of Illinois, have invented certain new and useful Improvements in the Art of Cracking Hydrocarbons, of which the following is a specification.

It is well known that when the heavier hydrocarbons contained in petroleum are heated to the necessary degree they break down into lighter hydrocarbons, with the release of more or less carbon. These lighter hydrocarbons are much the more valuable and therefore various processes and apparatus have been devised for so treating the crude petroleum or the heavier fraction thereof as to produce a greater proportion of the lighter hydrocarbons at the expense of the heavier. My invention relates to such a process and apparatus for carrying it out.

While cracking may be accomplished to some extent at a lower temperature, it has been found that for efficient operation a very high temperature is required—temperatures between 600° and 900° Fahrenheit being commonly employed. In order to attain such temperatures it is necessary to heat the oil under high pressure. The combination of high pressure with a temperature far above the ignition point of the material treated makes the refining operation a dangerous one. The danger is very largely increased under the usual working conditions by the deposition of carbon from the cracking operation, which settles at the bottom of the retort or receptacle in which the oil is being treated, more or less insulating the metal from the cooler body of liquid above it. As in the apparatus commonly employed the bottom of the retort or still which receives the precipitated carbon is exposed to the most intense heat, there is a strong tendency for it to become overheated and weaken the metal to such a point that it yields to the pressure within the still. This frequently leads to dangerous conflagrations, due to the ignition of the escaping oil.

It is the object of my invention to provide an apparatus for cracking oil by means of which the liquid is subjected to the required temperature and pressure under such conditions that there is no deposition of carbon or the like upon the highly heated surfaces, such surfaces being so arranged as to furnish no resting place for solids, and moreover, constantly swept clean by a rapid flow of oil under pressure.

In the accompanying drawings I have disclosed a preferred embodiment of my invention. It is to be understood, however, that the specific disclosure is for the purpose of exemplification only, and that the scope of the invention is defined in the following claims in which I have endeavored to distinguish the same from the prior art so far as known to me, without, however, relinquishing or abandoning any portion or feature thereof.

In the drawings accompanying and forming a portion of this application, Figure 1 is a plan view of the preferred form of apparatus for practising my invention; Fig. 2 a vertical section on the line 2—2 of Fig. 1, parts, however, being shown in elevation; Fig. 3 is a vertical section on the line 3—3 of Fig. 1; Fig. 4, an end elevation, partly in section, the structure being partially broken away in this and the preceding figure for the purpose of condensation, and Fig. 5 is a vertical section of a detail on an enlarged scale. Each part of the device is identified by the same reference character wherever it appears in the several views.

As above pointed out, my invention relates more particularly to the means for heating the oil. For this purpose it is passed through a battery of pipes in a furnace A being constantly circulated therethrough by a forcing device B from a tank C to which the oil returns from the pipes. The tank C is connected to a condenser 59, which may be of the usual type, and is therefore shown diagrammatically only in dotted lines at the left of Fig. 4. The worm of the condenser is provided with a suitable valve 60 for withdrawing the distillate as it condenses. Pressure is maintained undiminished throughout the heating pipes, tank and condenser, a pressure of about or more than one hundred pounds being preferably employed.

It will be understood that the liquid is maintained at such a level in the tank C as to provide sufficient vaporizing space above the same, this being accomplished by replenishing or replacing the liquid driven off in the distillation by the means hereinafter described.

The particular design of furnace for heat-

ing the oil circulating pipes is not material to the present invention. I have shown it as comprising horizontal flues 6, 7, which are connected by flues 8, 8. (Fig. 2) with fire boxes 9, 9, arranged upon opposite sides, respectively, of said pair of flues. The flues 6, 7 are connected by outlet flues 10, 10, with down-comer flues 12, leading to a stack-flue 13 intermediate the heating flues 6, 7. Flues 13 are connected to stacks 13'. Down-comer flues 12 are controlled by loose brick dampers 11. The structure may be of refractory brick or the like, resting upon a suitable foundation 14 and is reinforced by buck-stays 15 connected by tie-bars 16. The arches 17, 18 and floors 19, 20 of the heating flues are perforated vertically at suitable intervals for the passage of the batteries of heating tubes or pipes 22, 22, which extend vertically and uninterruptedly through the flues and are connected at top and bottom respectively to manifolds or headers 23, 24. The upper manifold comprises an intermediate main supply pipe 25 arranged above the roof of the flues and intermediate the latter, said main pipe being provided with parallel laterals 26 connected to said main pipe by the branches 27. Each of the laterals 26 is formed with a series of upwardly and downwardly projecting connection branches 28, 29, there being an upper branch or connection in registry with each lower branch or connection, the connections on the respective laterals being staggered, as best shown in Fig. 1. The lower header or manifold 24, except in the respect hereinafter to be pointed out, is similar to the upper manifold 23, and the heating pipes 22 extend vertically between the respective branches on the laterals of the upper and lower manifold and through the roof and floor of the respective flues. The upper branches 28 of the upper manifold 23 are closed by removable handhole covers, plugs or plates 30 of any suitable character, and the lower branches 31 of the lower manifold 24 are similarly closed. Traps 51, 52 are provided at the respective opposite ends of the laterals of the lower header or manifold and are each connected to the end of each of the adjacent laterals by elbows 53, 54 in such manner that the solid and semi-solid contents of the oils tend to settle into said traps. Each trap at its opposite ends has drawoff pipes 21, 21 provided with turning plugs 21^a, 21^a for draining the trap. From each end of the main 25 of the upper manifold, a return pipe 32, 33 leads to the corresponding end of the supply tank C, by means of which pipes 32 and 33 oil is continuously returned from the heating pipes to the tank. From the center of said tank a main 34 leads downwardly to the casing 35 of the oil forcing apparatus from which the oil is distributed by branch pipes 36, 37 to the opposite ends of the main 38 of the lower manifold. The oil forcing apparatus may be of any suitable type, but in the preferred embodiment it consists of a spiral or screw-propeller 39 in a barrel 40, the shaft 41 of the conveyer being provided at its outer end with a driving pulley 42 or other means for transmitting power thereto. Obviously, by rotating the screw-propeller in the proper direction the heavy oil is caused to circulate rapidly from the forcing apparatus upwardly through the heating pipes to the tank, and circulates back through the down-comer to the forcing apparatus. Because of the high pressure a special precaution must be taken for preventing the leakage of oil about the shaft 41, because the oil being above the ignition temperature would immediately ignite on exposure to the atmosphere. To avoid difficulty of this kind a stuffing box is provided about the shaft, (see Fig. 5) and is in turn inclosed in a housing 44, which is likewise packed at 45 about the shaft. Relatively cold oil is circulated through the housing 44 preferably at a pressure somewhat in excess of the pressure within the casing 35 so that if there is any leakage past the stuffing box 43, it will be of the cold oil rather than the hot oil. For this purpose a pump 46, shown diagrammatically in Fig. 5, is connected to a tank containing oil of the character being treated and by pipe 47 to the housing 44. From the housing the oil is led by pipe 48 to the interior of the casing 35 where it mingles with the oil being treated. The oil to maintain the level of the liquid in tank C is supplied in this manner but normally is not altogether sufficient for the cooling of the housing. Therefore I provide a waste pipe 48^a which preferably leads to the supply of oil. Valves 48^b, 48^c control the return or waste-pipe 48^a and the pipe 48 respectively and may be used to regulate the amount of oil introduced into the cracking system. The supply of oil to which the pump 46 and return pipe 48^a are connected is of sufficient size to avoid materially heating it by the return of oil thereto from the return pipe. 50^b indicates a pressure gage for observing the pressure of the oil. Sufficient circulation of the oil through the housing is maintained to prevent its becoming heated to a dangerous temperature so that it is immaterial if there be leakage past the packing 45.

The upper manifold supports the weight of the lower manifold and the heating pipes and is itself supported upon suitable I-beams 59', 60', forming part of the reinforcing structure of the furnace. Thus the pipes 22 are free to expand to the full extent necessary by reason of the great variation in temperature to which the pipes are subjected.

The tank C may be supported in any suitable manner, preferably above the level of

the furnace, and I have shown it as suspended by a stirrup 57 from a scaffolding 58.

The pipes 22 are of such internal diameter relative to the capacity of the oil supplying and forcing means that the oil is rapidly circulated therethrough and are maintained at such high temperature that notwithstanding the rapid circulation the oil is brought to a cracking temperature therein.

The only surfaces subjected to heat are all vertical and constantly swept by the current of oil so that there is little or no tendency for carbon to accumulate thereon and their heat-conductive capacity is therefore not diminished nor are the pipes in danger of overheating. There are no joints within the heated zone but only perfectly straight pipes and by reason of the handhole construction referred to above the pipes may be readily cleaned, there being a straight continuous passage from end to end. The greater proportion of the solid matter is deposited in the traps from which it may be readily removed and any matter accumulating in the lower header may be removed through the handholes on the lower connections thereof.

It is desirable, though not essential, to insert dephlegmators or the like in the connection 61 between tank C and the condenser in order to condense heavier hydrocarbons than those desired and the dephlegmator may be connected with any part of the system as, for example, with the casing 35, to return such heavier oils to the main body for further treatment.

I claim:

1. In a device of the class described, a furnace having heating flues therein, substantially vertical heating pipes extending through said heating flues, a supply tank, a connection from said heating pipes to said tank, a liquid forcing means, and connections from said tank and heating pipes to said means.

2. In a device of the class described, a furnace having heating flues therein, a battery of vertical pipes extending through said flues, manifolds connected to said pipes at their upper and lower ends respectively, a tank connected to both said manifolds, and mechanically operated means for circulating oil to be cracked through said manifolds, pipes and tank.

3. In a device of the class described, a furnace having heating flues therein, a battery of vertical pipes extending uninterruptedly through said flues, manifolds connecting the upper and lower ends of said pipes respectively, a tank connected to both of said manifolds and mechanically operated oil circulating means connected to one of said manifolds and said tank.

4. In a device of the class described, a furnace having heating flues therein, batteries of pipes extending uninterruptedly vertically through said flues, upper and lower manifolds connected respectively to said pipes outside the flues, a tank, connections between said tank and each of said manifolds and circulating means in one of said connections.

5. In a device of the class described, a furnace having heating flues therein, a battery of heating pipes extending uninterruptedly vertically through said flues and through the roof and floor thereof, manifolds connected to said pipes at their upper and lower ends respectively, hand holes in register with the upper and lower ends of said pipes for providing a rectilinear passage therethrough, and means for circulating oil through said manifolds and pipes.

6. In a device of the class described, a furnace, heating pipes therein, a supply tank connected to said heating pipes, a liquid forcing device connected to said pipes and to said tank respectively, a shaft extending into said forcing device for operating the same, and through the wall thereof to a source of power, a housing surrounding the shaft, and means for forcing relatively cool oil into said housing.

7. In a device of the class described, a furnace, heating pipes therein, a supply tank connected to said heating pipes, a liquid forcing device connected to said pipes and to said tank respectively, a shaft extending into said forcing device for operating the same, and through the wall thereof to a source of power, a housing surrounding the shaft, and means for forcing relatively cool oil under pressure into said housing.

8. An apparatus for cracking hydrocarbons comprising a tank for holding a body of oil, a furnace, a series of small vertical pipes in the furnace, means for forcing oil from the tank to the lower ends of said pipes and return connections from the upper ends of the pipes to the tank.

EDWARD W. ISOM.

[fol. 26] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed September 24, 1931

Now comes the defendant, Sinclair Refining Company, and moves to dismiss the bill in equity filed herein for discovery against the defendant upon the following grounds:

1. The matters of which discovery is sought are irrelevant and immaterial to the support of any issue which the plaintiff must establish to sustain the action at law referred to in petitioner's bill.

2. The matters of which discovery is sought relate solely to the amount of damages in the action at law, in aid of which the bill for discovery is filed, which amount of damages is not a proper subject of inquiry by bill of discovery.

3. The interrogatroies set forth in said bill for discovery do not call for the disclosure of facts which are proper subject matter of discovery in equity.

4. The defendant corporation cannot be compelled to make the discovery under oath, as asked for in the note at the end of the Bill.

5. The petitioner has a clear, plain, and adequate remedy at law.

Dated Sept. 24, 1931.

Sinclair Refining Company, by Verrill, Hale, Booth & Ives, Solicitors for Defendant. Charles D. Booth, of Counsel.

IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT—Filed February 18, 1932

PETERS, J.:

The litigation in which this bill in equity for discovery is a recent development has its origin in a written contract between the parties, dated October 2, 1916, recited in full in an opinion of this Court in the case of Jenkins Petroleum

Process Co. v. Sinclair Refining Co., 32 Fed. (2d) 247. In [fol. 27] that suit the plaintiff sought by a bill in equity to compel the assignment to it by the defendant of Letters Patent, U. S., 1,285,200, dated November 19th, 1918 (originally applied for by one E. W. Isom, September 10, 1917), claiming that certain improvements in the art of cracking hydrocarbons, covered by said Letters Patent, equitably belonged to the plaintiff under the terms of the contract above mentioned, by which a certain still for treating petroleum, devised by one Jenkins, was loaned to the defendant for experimental purposes with an agreement that any improvements which might be developed as a result of experiments with it should accrue to the benefit of the plaintiff.

It has held by this Court (affirmed by the Circuit Court of Appeals in the case of the same title, 32 Fed. (2d) 252, that the plaintiff had not made out a case entitling it to an assignment of the Letters Patent. The Appellate Court, however, directed that the bill be kept in court for possible further proceedings, and handed down the following mandate:

"The decree of the District Court is affirmed so far as it denies specific performance of the contract of October 2, 1916. But so far as it dismissed the bill as to other issues involved, it is reversed; and as to those issues the case is remanded to the District Court with directions to transfer it to the law side of the court, where within thirty days from the date of this order the plaintiff may have leave to amend its bill of complaint into an action at law for breach of the contract of October 2, 1916."

Under the authority of this mandate the plaintiff amended its bill of complaint into an action at law to recover damages for the alleged breach of the contract of October 2nd, 1916, which contract was in the form of a letter written by the plaintiff to the defendant, in which the following language was used:

"It is further definitely understood and agreed between us that any improvements, whether of a mechanical nature, or in the process, which may be developed as the result of the work of your engineers and experts in familiarizing themselves [fol. 28] with the Jenkins apparatus and process, shall accrue to the Jenkins Petroleum Process Company, and that

you shall, so far as you are able to do, cause your employees carrying on such experimental work to execute applications for patents for the United States and any other countries to protect any such improvements, but at the expense of the Jenkins Petroleum Process Company, and to assign said applications, together with the improvements they are intended to protect to the Jenkins Petroleum Process Company."

The declaration, now embracing three counts, alleges in substance that the defendant's expert, Isom, in familiarizing himself with the Jenkins apparatus and process, did develop improvements to which the plaintiff was entitled, and that Isom made an application for a patent covering the same; but that, in contravention of the agreement between the parties, the defendant caused Isom to assign his application to the defendant instead of to the plaintiff, and that the defendant used the application to obtain a patent covering the alleged improvements and has made extensive and profitable use of it, and has failed and refused to compensate the plaintiff for its use.

The allegations in the plaintiff's declaration that the defendant broke the contract because it failed to cause Isom, its agent, to assign his application for letters patent to the plaintiff and to turn over to the plaintiff the improvements that he had discovered in the Jenkins process, are obviously well pleaded, and if there is any breach of the contract it is exactly in that respect. The further allegations that the defendant failed to assign the patent subsequently obtained on the Isom application, but used it widely and profitably in its business and refused to pay the plaintiff for its use, seem to me entirely irrelevant to any issue in the action at law, and indicate that the plaintiff—while it has changed the form of its original action—has not changed its theory that it is equitably entitled either to the Isom patent or to the benefit the defendant reaped from it. As it has been decided that the plaintiff is not entitled to the Isom patent, and as this is [fol. 29] not a suit for infringement, it is clear that the question of the use or the value of the use of the Isom patent by the defendants has no materiality whatever.

The pending suit at law is, and should be regarded simply as an action to recover damages for the failure of the defendant to cause to be turned over to the plaintiff

something alleged to be of value, viz., the Isom application and the improvements covered by it. The letters patent show that Isom assigned his application to the defendant. It is asserted by counsel that the records of the Patent Office show that the application had been so assigned when it was filed, in which case it would seem that any breach occurred not later than September 10, 1917, when the application was filed. For a breach of the contract the plaintiff is entitled to compensation commensurate with its loss at the time of the breach. This cannot take the form of compensation for defendant's use of the property after the breach, even if it is difficult to fix the value of the property or otherwise determine the amount of the plaintiff's loss at the time of the breach.

In this form of action, the plaintiff is entitled to recover the full money equivalent of the property it has been wrongfully deprived of, but "the rights of the parties in respect to a breach of the contract became fixed at the time thereof." 17 Corpus Juris, 880.

The allegation of the plaintiff in its several counts in the declaration that the defendant has "failed and refused to compensate said plaintiff for said wide and extensive and profitable use," occurring over a long period and years after the date of any breach, is mere surplussage and must be so considered when this suit comes to trial.

In this situation and with this background the plaintiff brings this bill of discovery in aid of its action at law, alleging that for the period of ten years or more subsequent to November 19, 1919, the defendant carried on an extensive business in the cracking of petroleum oils, operating many stills embodying the characteristic features of the Isom patent, and producing a large quantity of gasoline and other petroleum products with that patent as the basis of its production; further alleging that the plaintiff cannot [fol. 30] prove its damages in the action at law without information covering the cracking stills operated by the defendant, including the number and nature of stills, to be shown by drawings, etc., the number of barrels of gasoline and other products resulting from its cracking processes from any such stills, and the amount of petroleum oil charged into the stills, setting forth interrogatories to be answered covering operations by the defendant during that period, involving information and figures which its attor-

neys say would require the laborious activities of accountants many months to compile and the disclosure of which to the public might greatly damage the defendant.

The information asked for admittedly relates wholly to the matter of damages. The defendant contends that for that reason, among others, a bill of discovery will not lie, and also that the information asked for is not pertinent to the inquiry under any rule of damages applicable to the case. A motion to dismiss the bill was made and the case now comes up on that motion.

In support of its proposition that a bill will not lie when a discovery sought relates solely to the amount of damages in the action at law, the defendant strongly relies upon two cases in the second circuit, Munger v. Firestone, 261 Fed. 921, and Loose v. Bellows, 266 Fed. 81.

Counsel for plaintiff questions the authoritative value of the Munger case on the ground that it is not in harmony with the older authorities, and that it possibly represents a misapplication of the principle that in an action in which the issues of liability and damages are severable and are not to be tried together, discovery in relation to damages is usually not allowed until the plaintiff has prevailed on the first issue and thereby established his right to some damages; and suggests that the Loose case could have been decided the same way by applying the principle that if a bill for relief and discovery cannot be sustained as to the relief, it necessarily falls as to the discovery.

[fol. 31] The language of the court in the Munger case, and the circumstances of that case, hardly authorize the interpretation suggested by counsel for plaintiff. In this opinion the Court said:

"However, the plaintiff, having gone to law, and having applied to equity solely for discovery, without other relief, can have only such discovery as equity grants. While the inconvenience of the remedy at law may authorize a suit in equity, that fact cannot in any way extend the jurisdiction or course of equity in respect to discovery.

* * * * * * *

"In other words, equity grants discovery in aid of a plaintiff's right or cause of action or in aid of a defendant's defense. These are defined by the issues of the case;

whereas the amount of damages is never at issue. If a plaintiff prevail upon the issues upon his cause of action, he will be entitled to nominal damages, though he prove no damage at all, and of course, if a defendant prevail upon the issues as to his defenses, no damages will be recoverable. The amount of damages is not an issue, but follows the determination of the issues in the case, and discovery is granted only in aid of the issues.

This undoubtedly puts the plaintiff in this particular case in a very embarrassing situation. The trial judge will have to determine when he shall have made out a sufficient case to justify an examination of the defendant's books, papers, etc. A contrary conclusion would introduce a dangerous practice. All a patentee would have to do in order to completely ventilate a competitor's business would be to bring an action at law for infringement and then apply to a court of equity for discovery in aid of it. We speak of the possibility of this danger generally, because no such purpose appears in this case.

No decision upon this precise question has been called to our attention, though it was raised, but not decided, in Colgate v. Compagnie Francaise du Telegraphe de Paris a N. Y. (C. C.), 23 Fed. 82."

[fol. 32] In the Munger case a petition for certiorari was presented to the Supreme Court and denied. 262 U. S., 582. The way the case was presented to the Supreme Court, according to the record, as described by counsel for defendant here, who have examined it, would also indicate that the opinion of the Circuit Court was not open to the criticism suggested by counsel.

The Munger case was a patent infringement case and not an action for breach of contract; but the same Court, in the case of Loose v. Bellows held that the same ruling applied in a suit for breach of contract.

"Chancery grants discovery when the law affords no adequate remedy to extract from a defendant facts in his exclusive possession which are a part of or constitute the cause of action. But mere difficulty of proving his case will not confer on a plaintiff the right to file a bill. United States vs. Bitter Root Co., 200 U. S., 472, 26 Sup. Ct. 318, 50 L. Ed. Equity will not aid law to ascertain damages by entertaining a bill for discovery. Munger vs. Firestone, etc. Co., 261 Fed. 921. A fortiori will it not retain a bill

when the discovery desired has no other purpose that the liquidation of damages."

As the sole purpose of the bill in the instant case is to discover evidence affecting the amount of damages, I hold that for that reason the bill cannot be maintained.

Also, it seems clear that evidence of the value of the use of the Isom patent by defendant long after the date of the alleged breach, as I have fixed it, is not pertinent to the inquiry in the suit at law and it would be inadmissible if offered.

I should regard evidence of value of the Isom patent itself as inadmissible in the absence of evidence referring its value to the date of the breach of the contract.

Assuming that the Isom patent can be identified with the improvements in the Jenkins process which the plaintiff claims to have been deprived of, evidence of its value after the breach could only be admitted as an exception to the general rule that the plaintiff's rights should be determined as of the date of the breach. The plaintiff claims to come [fol. 33] within such an exception, i. e., the rule of the highest intermediate value of the property from the date delivery should have been made to the date of the trial; but this rule is limited by the cases cited and others to cases of conversion of stocks of corporations, and like property, of a speculative character, and would have no proper application here.

A consideration of the evidence sought to be obtained by the plaintiff in this bill and its applicability to the issues presented by the suit at law, leads me to the conclusion that such evidence would be irrelevant and immaterial if offered in the trial of the suit; and of course, under those circumstances, the discovery is futile and should not be allowed.

It is quite apparent from the decisions of the Supreme Court, as well as various courts of appeal, that, while the remedy by a bill of discovery has not been abolished, it may be used only in exceptional cases in the present practice since the enactment of Section 724 U. S. Revised Statutes.

In Bradford v. Indiana Belt R. Co., 300 Fed. 78, the Court of Appeals in its opinion said, "The bill in equity for discovery in aid or defense of actions at law has fallen quite into disuse, since Section 724 U. S. Revised Statutes became effective." The Court quoted the Supreme Court

in Carpenter v. Winn, 221 U. S. 533, where it was said that "The purpose of the provision (i. e. Section 724) is to provide a substitute for a bill of discovery in aid of a legal action." Safford v. Ensign Mfg. Co., 120 Fed. 480; U. S. vs. Bitter Root Development Co., 133 Fed. 274.

I consider that the Court should not require the discovery except on a clear showing where the information desired is very certainly admissible in evidence in the principal suit, and not as evidence merely but as ultimate facts material to the issue. Wolcott v. National Signaling Co., 235 Fed. 224; Taylor v. Ford Motor Co., 2 Fed. (2d) 473.

The claim of the defendant here that irreparable damage would be caused it by answering the interrogatories in the bill, and the obviously great length of time and labor involved in compiling the information required, are addi-[fol. 34] tional reasons for requiring a clear showing by the complainant.

My conclusion is that the motion of the defendant must be granted, and the bill dismissed. A decree has been signed to that effect.

In United States District Court

Decree Dismissing Bill—Filed February 15, 1932

This matter came on to be heard this fifteenth day of February, 1932, on the motion of defendant to dismiss the plaintiff's bill; whereupon, after hearing and consideration thereof, it is

Ordered, adjudged, and Decreed that the motion to dismiss be granted and that the bill be dismissed with costs.

John A. Peters, Judge U. S. District Court, District of Maine.

In United States District Court

Petition for Appeal

The Petition for Appeal is dated May 13, 1932, and was filed in this Court on the same day, together with Assignment of Errors and Bond on Appeal. The appeal was allowed by Peters, J., May 13, 1932.

In United States District Court

Bond on Appeal

This Bond is dated May 13, 1932, and is in the penal sum of $250.00; the obligors are Jenkins Petroleum Process Company as principal, and The Ætna Casualty and Surety Company of Hartford, Connecticut, as surety, and the conditions are that the principal shall prosecute its appeal to effect and answer all damages and costs if it fail to make its appeal good.

In United States District Court

Citation on Appeal

Citation was issued May 13, 1932, returnable June 12, 1932, and service thereof was acknowledged May 13, 1932. For cause shown, the time for return has been enlarged by the Court as shown on the original Citation.

[fol. 35] In United States District Court

Assignment of Errors—Filed May 13, 1932

Now comes the Jenkins Petroleum Process Company, the plaintiff in the above-entitled cause, and files the following assignment of errors upon which the plaintiff will rely upon its prosecution of its appeal in the above-entitled cause from the decree made and entered by this Honorable Court on the 15th day of February, 1932:

1. The District Court erred in dismissing the plaintiff's bill in equity for the discovery by the defendant of facts which rest peculiarly within the knowledge of the defendant and of documents in the possession of the defendant which are material to the support of the plaintiff's case in an action at law entitled "Jenkins Petroleum Process Company against Sinclair Refining Company," at law No. 1178, which is now pending and is undetermined on the law side of this Court.

2. The District Court erred in holding that the allegations in the declaration in said action at law to the effect that the defendant failed to assign to the plaintiff the Isom Patent No. 1,285,200, and that the defendant used the invention of said patent widely and profitably in its business and refused to pay the plaintiff for its use, are irrelevant to any issue in said action at law.

3. The District Court erred in holding that no breach of the contract in suit in said action at law could have occurred or did occur after September 10, 1917, when the application was filed on which said Isom Patent No. 1,285,200 thereafter issued, and when said application was assigned by said Isom to the defendant.

4. The District Court erred in holding [illegible] the only measure of the damages recoverable in said [illegible] at law is the value of said application on which said [illegible] Patent No. 1,285,200 issued, and of the improvement covered thereby, as of September 10, 1917, the date on which [illegible] application was assigned by said Isom to the defendant, and that no facts, acts and or conditions which relate to any date later than said September 10, 1917, can be relevant and material evidence on the issue as to the value of said Isom application and of improvements covered thereby.

[fol. 36] 5. The District Court erred in holding that a bill in equity for the discovery in advance of the trial of an action at law, of facts which rest peculiarly within the knowledge of the defendant and of documents in the possession of the defendant which are material and relevant to the issue of the damages recoverable in said action at law, cannot be maintained in any Court of Equity of the United States.

6. The District Court erred in holding that the evidence sought to be obtained by the bill in equity for discovery herein would not be relevant and material to any issue in said action at law.

7. The District Court erred in holding that since the enactment of Section 724 of the Revised Statutes, bills in equity for discovery in aid of actions at law only can be maintained in the Courts of Equity of the United States in exceptional cases.

8. The District Court erred in holding that irreparable damage would be caused to the defendant if it should be required to answer the interrogatories in the bill in equity for discovery herein.

9. The District Court erred in holding that any great length of time and/or any considerable labor and/or any considerable expense would be involved in compiling the information sought by the bill in equity for discovery herein.

10. The District Court erred in not granting the plaintiff the relief sought by the bill in equity for discovery herein.

11. The District Court erred in not commanding the defendant to make full, true, direct and perfect answer to each of the several interrogatories set forth in the bill in equity for discovery herein, and to attach to the answers to said interrogatories copies fo the various drawings, papers and other documents therein called for.

12. The District Court erred in not holding that the plaintiff is entitled, under the conditions alleged in the bill in equity for discovery herein, to have discovery from the defendant relative to any matter in question which is about to come on for trial in said pending action at law.

13. The District Court erred in not holding that evidence of the use of the invention of said Isom Patent No. 1,285,200 [fol. 37] by the defendant in its commercial cracking of petroleum oils to produce gasoline is not relevant and material to the issue of the damages caused to the plaintiff by the defendant's breach of the contract in suit in said action at law.

14. The District Court erred in not holding that the plaintiff is entitled to recover in said action at law compensation for any gains which it was prevented from obtaining on account of the defendant's breach of the contract in suit in the said action at law.

15. The District Court erred in not holding that, even if the damages recoverable by the plaintiff in said action at law must be measured by the value of said application on which said Isom Patent No. 1,285,200 issued and by the

value of the improvements covered thereby, as of said September 10, 1917, when said Isom assigned said application to the defendant, nevertheless, evidence of every fact, act, condition and/or happening, either prior or subsequent to said date and relevant and material to the question of the value of the invention disclosed in and claimed by said application and of the value of the improvements covered thereby, should be admitted at the trial of said action at law for the purpose of assisting the jury in ascertaining and in fixing the value, as of September 10, 1917, of said application and of the improvements covered thereby.

16. The District Court erred in not holding that the value of the invention disclosed by the application on which said Isom Patent No. 1,285,200 issued, and that the value of the improvements covered thereby, do not necessarily depend upon or coincide with the value of said patent application as of the date it was filed in the United States Patent Office.

17. The District Court erred in not holding that the plaintiff is entitled to recover the full value of the invention disclosed and claimed in said application on which said Isom Patent No. 1,285,200 issued, and in not holding that evidence of the use of said invention in the commercial cracking of petroleum oils to produce gasoline is material and relevant evidence upon the issue as to the value of said invention.

[fol. 38] 18. The District Court erred in not holding that the plaintiff is entitled to recover the full value of the improvements, whether of a mechanical nature or in the process, to protect which said application was filed on which said Isom Patent No. 1,285,200 issued, and in not holding that evidence of the use of said improvements in the commercial cracking of petroleum oils to produce gasoline is material and relevant evidence upon the issue as to the value of said improvements.

Wherefore, the plaintiff and appellant prays that said decree be reversed and that said District Court of the United States for the District of Maine be ordered to enter a decree reversing the decision and the decree of said Dis-

trict Court in said cause and granting the plaintiff the relief prayed for in its bill in equity for discovery.

Philip G. Clifford, C. Stanley Thompson, Solicitors for the Plaintiff.

In United States District Court

Plaintiff's Præcipe for Transcript of Record—Filed May 13, 1932

To the Clerk of the District Court of the United States for the District of Maine, Southern Division:

The Jenkins Petroleum Process Company, the plaintiff in the above-entitled cause, desires the following portions of the record of the above-entitled cause to be incorporated into the transcript on its appeal to the United States Circuit Court of Appeals for the First Circuit, namely:

The plaintiff's bill in equity for discovery, including Exhibits A, B, C and D, which are attached to and are a part of said bill in equity; the defendant's motion to dismiss said bill in equity for discovery; the opinion of the court; the final decree dismissing the plaintiff's bill in equity for discovery, which was filed on February 15, 1932; this præcipe; the notice to counsel for the defendant of the filing of this præcipe; the acknowledgment of service of said præcipe; the plaintiff's petition for appeal, and the plaintiff's [fol. 39] assignment of errors which was filed with said petition, and all orders, citations and decrees of said District Court, and all stipulations of the parties made in connection therewith and in furtherance thereof.

Philip G. Clifford, C. Stanley Thompson, Solicitors for the Plaintiff.

In United States District Court

Defendant's Præcipe for Transcript of Record—Filed May 13, 1932

To the Clerk of the District Court of the United States for the District of Maine, Southern Division:

Sinclair Refining Company, the defendant in the above entitled cause, desires the following portions of the record in the above entitled cause to be incorporated into the tran-

script of its appeal to the United States Circuit Court of Appeals for the First Circuit, in addition to the portions of the record set forth in plaintiff's præcipe, namely:

Plaintiff's original "Bill of Complaint," filed January 21, 1921, of which plaintiff's Declaration (Exhibits A and B attached to plaintiff's bill in equity for discovery) purports to be an amendment; Defendant's Answer to said Bill of Complaint and Counterclaim, filed July 25, 1921; Plaintiff's reply to defendant's Counterclaim, filed August 31, 1921; Defendant's Amendment to Answer to said Bill of Complaint, filed September 25, 1922; the Final Decree in said equity suit, filed August 13, 1926; the Mandate of the Circuit Court of Appeals for the First Circuit in said original equity suit dated July 30, 1929; and the Order of the Court pursuant to said Mandate, transferring the cause from the equity to the law side of the Court.

Verrill, Hale, Booth & Ives, Attorneys for Defendant.

[fol. 40] In United States District Court, District of Maine

In Equity. No. 816

Jenkins Petroleum Process Company, Plaintiff,

vs.

Sinclair Refining Company, Defendant

Plaintiff's Original Bill of Complaint—Filed January 21, 1921

The Plaintiff, Jenkins Petroleum Process Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, files this, its bill of complaint, against Sinclair Refining Company, a corporation organized under the laws of the State of Maine, and thereupon complains and says:

(1) The Jenkins Petroleum Process Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen and resident of the State of Wisconsin.

(2) The defendant, Sinclair Refining Company, is a corporation organized and existing under the laws of the State of Maine, and is a citizen and resident of the State of Maine, and was originally organized and known as Cudahy Refining Company, and for a long time carried on its business under the name of "Cudahy Refining Company," and was organized, among other things, for the purpose of treating petroleum products; and on and prior to the second day of October, 1916, was carrying on its business of treating petroleum products under its then name of Cudahy Refining Company, and thereafter, in accordance with the provisions of the laws of the State of Maine, the said Cudahy Refining Company and the stockholders of said Cudahy Refining Company caused the name of said company to be [fol. 41] changed to "Sinclair Refining Company," and the said defendant has since the said change of name carried on the business of treating petroleum products under the name of "Sinclair Refining Company."

(3) The Sinclair Consolidated Oil Corporation is a corporation organized under the laws of the State of New York, and is a citizen and resident of the State of New York, and is the holder and owner of the shares of stock of the defendant, Sinclair Refining Company, or of the great bulk of the shares of stock of the said Sinclair Refining Company, and is also the holder and owner of many other corporations engaged in various enterprises connected with the production, refining and marketing of petroleum and petroleum products, and the said business of the Sinclair Refining Company, and of all the other subsidiaries of the said Sinclair Consolidated Oil Corporation, is conducted as a single enterprise; and the said defendant, Sinclair Refining Company, and all the other subsidiary corporations of the said Sinclair Consolidated Oil Corporation, are entirely controlled by the said holding corporation, and are operated as one enterprise; and, for greater brevity, the plaintiff prays leave to hereafter refer to the defendant, Sinclair Refining Company, as the "Refining Company," and to the Sinclair Consolidated Oil Corporation, as the "Oil Company."

(4) The plaintiff was organized for the purpose of treat-

ing petroleum products and developing processes of treating petroleum products, and for that purpose acquired the ownership of certain processes and useful inventions, heretofore discovered by Ulysses S. Jenkins, including certain letters patent of the United States, dated May 15, 1917, being Letters Patent No. 1,226,526, a copy of which Letters Patent is hereto annexed and marked "Exhibit 1"; and Letters Patent of the United States, dated November 11, 1919, being Letters Patent No. 1,321,749, a copy of which Letters Patent is here*by* annexed and marked "Exhibit 2."

(5) The plaintiff further says that, during the month of June, 1916, Ulysses S. Jenkins, T. S. Black and W. C. Black, all then residents of Chicago, in the State of Illinois, and A. G. Maguire, a resident of Milwaukee, in the State of Wis- [fol. 42] consin, associated themselves in business for the purpose of developing and using the said inventions of the said Ulysses S. Jenkins, and for that purpose the said Jenkins conveyed to the said T. S. Black, W. C. Black and A. G. Maguire an interest in the said inventions and in all patents to be issued thereon so that the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, on or before the 20th day of June, 1916, became jointly the owners of the said inventions and of all patents to be issued thereon, and thereafter the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, for the purpose of utilizing the said inventions and patent rights, undertook the organization of the plaintiff corporation, and in the month of July, 1916, subscribed to the capital stock of the plaintiff corporation, and under date of September 25, 1916, executed the Articles of Incorporation as required by the laws of the State of Wisconsin, at which time the said Jenkins had made the inventions and discoveries described in the said Letters Patent and applied for said Letters Patent; and the plaintiff says that while the United States Patent Office had not finally passed upon the inventions set up in the applications for said patents, nor finally determined just what claims would be allowed, yet it had become evident that if the said inventions were patentable, the said processes and apparatus, and the patents thereon and any improvements thereto, would be of great value to persons engaged in the treatment of petroleum products; and the plaintiff says that the defendant, Sinclair Refining Company, under its then

name of Cudahy Refining Company, applied to the said Jenkins and his said associates for an opportunity to investigate the said Jenkins process of treating petroleum, and stated that if they would allow the said Cudahy Refining Company and its officers and representatives to have full knowledge of the said Jenkins process and apparatus, the applications for patents thereon then pending, and its experimental still, the said Cudahy Refining Company would enter into a contract to purchase the right to use said process and the said patents in and about its treatment of petroleum products, and stated that if the application for Letters Patent on said inventions of Jenkins were granted, [fol. 43] the said Cudahy Refining Company would pay very large sums in royalties, and in the purchase of rights under said patents, amounting to many millions of dollars, but that the Cudahy Refining Company represented that it was necessary to have in its possession the patent applications then pending of said Jenkins, the experimental still of the Jenkins Company, and also to have available the services of said Jenkins in order to adapt the said Jenkins processes and apparatus to its commercial needs, and for use at its various plants and refineries; and said Cudahy Refining Company represented that it would treat confidentially the disclosure of said patent applications, the experimental still, and the instructions of said Jenkins and his associates relative to the nature of the Jenkins apparatus and process, and any improvements thereon; and agreed that any improvements, whether of mechanical nature or in the process which may be developed as a result of the work of the Cudahy Refining Company's engineers, experts and other employes in familiarizing themselves with the Jenkins apparatus and processes, shall accrue to the Jenkins Petroleum Process Company, and shall become and remain the property of said Jenkins and his associates, and thereupon, on or about the second day of October, 1916, the said Jenkins and his associates, acting in the corporate name of the plaintiff corporation, which was then in process of organization and in which the said Jenkins and his associates were the sole parties interested, and the said defendant, Sinclair Refining Company, under its then name of

Cudahy Refining Company, entered into a certain contract and agreement in writing, which was in words and figures as follows:

"Chicago, Illinois, October 2nd, 1916.

Cudahy Refining Company, Chicago, Illinois.

GENTLEMEN: Pursuant to our conversations and conferences relative to the Jenkins Process of treating petroleum, it is understood that we are to loan you our experimental [fol. 44] still to be shipped to Coffeyville, Kansas, so that your experts and engineers may have apparatus immediately available upon which to carry out experiments upon the Jenkins improved process upon your petroleum products.

It is further understood that Mr. Ulysses S. Jenkins, of Chicago, will go to Coffeyville, Kansas, to install the still and will remain in an advisory capacity throughout the entire course of experimental work carried on by your experts, Mr. Jenkins' salary being $150.00 per month, and all expenses, including railroad expenses incurred by him in making trips to Chicago, rendered necessary by said experimental work, this to be paid by you.

It is further definitely understood and agreed between us that any improvements, whether of a mechanical nature, or in the process, which may be developed as the result of the work of your engineers and experts in familiarizing themselves with the Jenkins apparatus and process, shall accrue to the Jenkins Petroleum Process Company, and that you shall, so far as you are able to do, cause your employees carrying on such experimental work to execute applications for patents for the United States and any other countries to protect any such improvements, but at the expense of the Jenkins Petroleum Process Company, and to assign said applications, together with the improvements they are intended to protect, to the Jenkins Petroleum Process Company. This provision is of course rendered necessary by the fact that in the development of a process of this character, and particularly in its application to particular oils, many short cuts and improvements necessarily are developed by the experts entrusted with the carrying out of the process, which belong by right to their employer, and under the circumstances here involved, of course, to the Jenkins

Petroleum Process Company, inasmuch as they are loaning you not only their experimental still, but also the services of Mr. Jenkins, the inventor himself.

[fol. 45] It is further understood that all expenses in connection with the transportation of the still and incidental expenses shall be paid by you, and that as soon as your engineers and experts have carried on sufficient work with this still to thoroughly familiarize themselves with the process and discover the best conditions under which to apply the process to your petroleum products, the still will be returned in good condition to us, and that Mr. Jenkins' salary will continue from the time the still is first shipped to Coffeyville, until such time as it is returned.

Yours very truly, Jenkins Petroleum Process Company, by A. G. Maguire, President.

This letter and agreement accepted and approved.
Cudahy Refining Company, by W. H. Isom, Pres."

The plaintiff says that W. H. Isom was then the President of the Cudahy Refining Company, and its chief executive officer, and duly empowered to execute the said contract on its behalf, and that Edward W. Isom, hereinafter referred to, was the son of W. H. Isom, and was an engineer in the employ of the said Cudahy Refining Company, and the plaintiff says that promptly thereafter the incorporation of the plaintiff was fully completed in accordance with the laws of the State of Wisconsin and on the 9th day of October the Certificate of Incorporation of the plaintiff corporation was duly issued by the Secretary of State of the State of Wisconsin, and on the 16th day of October, 1916, the said Certificate of Incorporation and the Articles of incorporation were duly recorded in the County of Milwaukee, in the State of Wisconsin, and thereafter the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, in pursuance of their previous agreement and undertaking at the time of the subscription by them to the shares of stock of the plaintiff corporation, conveyed to the plaintiff corporation all their interest in and to the said [fol. 46] inventions of the said Jenkins and in and to all applications for Letters Patent therefor and in and to all patents which would be thereafter issued in connection with the said inventions or any improvements or developments thereof.

(6) The plaintiff says that, in pursuance of said agreement of October 2, 1916, the plaintiff did in fact loan to the defendant, Sinclair Refining Company, apparatus theretofore invented and constructed by the said Ulysses S. Jenkins, the applications for patents thereon then pending, being substantially the apparatus described in said Letters Patent, Exhibits Nos. 1 and 2; and the said Ulysses S. Jenkins, who was and is in the employ of the plaintiff, and who then was and still is a stockholder of the plaintiff and actively interested in the said plaintiff, went to the works of the said defendant at Coffeyville, in the State of Kansas, and there erected the said apparatus, and the said Jenkins spent a great part of his time at the plant of said defendant, and fully informed the said defendant and its employes and officers, particularly the said Edward W. Isom, as to the nature of the said inventions and discoveries, and discussed with the officers and employes of the said defendant, the plans and ideas of the said Jenkins for the further development and improvement of the said apparatus and process, and to the best of his ability instructed the said officers and employes in the art in which said processes and apparatus were used and to be used, and in all respects the said Jenkins and said plaintiff, and its other officers and employes, carried out in good faith the terms of the said contract of October 2, 1916, for the purpose, among others, of so adapting the said process and apparatus to the uses and needs of the said defendant that the said defendant would be able to use the same in the conduct of its said business, and would be able and willing (as the said defendant had assured the plaintiff it would be willing in such event) to pay to the plaintiff very large sums of money, to acquire the right to use the said patents, and to further agree to pay further very large sums by way of royalties for the continued use thereof.

[fol. 47] (7) The plaintiff further avers that the said defendant, for a long time after the said second day of October, 1916, and while the said defendant was familiarizing itself with the said process and apparatus, and acquiring the knowledge of the art and the suggestions as to the improvements in the art made by the said Jenkins as aforesaid, claimed that said processes and apparatus would be of great value to it, and that it had become convinced of

the merits of the said processes, and of the value of the said apparatus, and would be willing to acquire the same, and to pay very large sums of money, aggregating many millions of dollars, therefor, if the said applications for Letters Patent should be granted, and if patents should be allowed and issued; and the said defendant at various times caused drafts of contracts to be made, covering the various propositions from time to time suggested by the said defendant to the plaintiff, and by various assurances and promises gained and enjoyed the confidence of the plaintiff and its officers, and induced the said plaintiff and its officers, and the said Jenkins, to continue to instruct the said defendant in the said art, and to permit the said defendant to continue to possess, use, and experiment with the said apparatus so invented and manufactured by the said Jenkins, and so owned by the plaintiff, as aforesaid.

(8) The plaintiff shows that the said Edward W. Isom, on or about the tenth day of September, 1917, having acquired the ideas and gained instructions from the said Jenkins and the other officers and employes of the plaintiff, as aforesaid, surreptitiously and without the knowledge of the plaintiff or its officers or representatives, filed a certain application for Letters Patent of the United States, and thereafter, without the consent of the plaintiff, procured Letters Patent of the United States to be issued, under date of November 19, 1918, being Letters Patent No. 1,285,200, a copy of which Letters Patent is hereto annexed and marked "Exhibit 3."

(9) The plaintiff further says that the said apparatus described in the said Letters Patent, Exhibit 3, was developed as a result of the opportunities afforded to the engineers and experts and employes of the said defendant to familiarize themselves with the said Jenkins' apparatus [fol. 48] and process, and that the said apparatus, and process resulting from the use of the said apparatus, as described in the said Letters Patent, Exhibit 3, embody the essential features of the said patents belonging to the plaintiff, and in so far as the said apparatus and process have any merit or utility in the art, such merit and utility consist simply in improvements and adaptations of the said Jenkins apparatus and processes.

(10) And the plaintiff says that the said apparatus prepared by the said Jenkins remained in the possession of the said defendant during all the time that the said Isom was engaged in the preparation of the said apparatus and process described in the said Letters Patent, Exhibit 3, and the plaintiff alleges that in fact the said defendant has ever since retained, and now has in its possession, the said apparatus, and is still availing itself of the information which the possession of the said apparatus enables it to obtain by a study thereof and experiment therewith.

(11) The plaintiff says that the said Edward W. Isom was at all times, in connection with the matters aforesaid, acting entirely under the direction and control of the said defendant.

(12) The plaintiff says that the said defendant, regardless of its obligations arising under the terms of the said contract of October 2, 1916, and also arising from the acts and dealings between the parties, and from the confidential communications made to the said defendant by the plaintiff, did not cause the said Isom to assign his applications for the said Letters Patent, or to turn over the said improvement and processes to the plaintiff, but, on the contrary thereof, the said defendant, under its name of "Sinclair Refining Company," caused the said Edward W. Isom to assign his said Letters Patent to the said defendant.

(13) The plaintiff says that the said defendant, having obtained an assignment of the said alleged patent of the said Edward W. Isom, Exhibit 3, thereafter disregarded its obligations to the plaintiff arising under the said contract, and out of the dealings between the plaintiff and the said defendant hereinbefore set forth, and began the erection of stills at various plants of the said defendant and its [fol. 49] affiliated companies, and turned over or attempted to turn over the control of the said apparatus, process and of the said method of "cracking" petroleum products to the Sinclair Consolidated Oil Corporation; and thereafter the said Oil Company caused it to be publicly proclaimed and advertised that it had obtained control of valuable patents on improved processes in "cracking" petroleum products and that its said patent rights, and the processes under its control, were of vast value, and that other persons, em-

ploying similar processes for "cracking" petroleum products, would be subject to litigation and to liability to pay heavy royalties or damages to the said Oil Company, in case they should attempt to use such processes or infringe upon the alleged patent rights of the said defendant; and the plaintiff says that not only have the said defendants refused to carry out their said contracts and obligations with the said plaintiff, but by their said actions, they have greatly hampered the plaintiff in entering into contracts with third parties for the use of the patents and processes owned by the plaintiff, under its said patents and the processes invented by the said Jenkins as aforesaid.

(4) The plaintiff, promptly after it had learned of the said action of the said Isom in obtaining the said Letters Patent, and in assigning the same to the defendant Refining Company, demanded of the said defendant Refining Company that it assign to the plaintiff, and cause the said Isom to assign to the said plaintiff, the said patent and all other processes, apparatus and improvements discovered or invented by the defendant, their engineers, experts, employes or agents while in the possession of the said apparatus so invented by the said Jenkins, and devised or developed by the employes of the defendant Refining Company after it or they had received full information from the said apparatus, patent applications and the said Jenkins in the art, as hereinbefore set forth; but the plaintiff says that the said defendant, disregarding its obligations in that behalf, has not caused the said inventions or Letters Patent to be assigned to the plaintiff; and the plaintiff on information and belief alleges that the said defend-[fol. 50] ant has no intention of performing its obligations to the said plaintiff in connection with the improvements and developments of the said Jenkins apparatus and processes, heretofore made, or which hereafter may be made by the said defendant through the knowledge gained by them from the use of the said Jenkins apparatus and process, the patent applications thereon, and the instructions obtained from the said Jenkins, as aforesaid.

(15) Plaintiff says that the said Oil Company is a corporation of great size, which claims to have assets of over two hundred and sixty-five millions of dollars, and claims to have earned, during the year 1919, an amount in excess of

seventy-six million dollars; and through itself and its subsidiaries claims to carry on its business operations not only throughout the United States but over the greater part of the world, and in its public advertisements claims that it is and will be enabled to largely increase the value of its products and to obtain a much larger percentage of gasoline than could otherwise be obtained, because it has equipped its oil refineries with complete installations and has added to said oil refineries so-called "cracking" processes, and that such improvements increase the quantity of materials which are available for the use of the said oil company in manufacturing those products of petroleum which are regarded as most valuable; and, in advertising its said business, the said Oil Company has incorporated the following statements in its advertisements and prospectuses, viz.: "The cracking process owned and operated exclusively by the Sinclair Company has been investigated by expert petroleum refining engineers, and has been declared by them to be the most efficient," and the plaintiff says that the said acts and statements of the said Oil Company are all made in behalf of and under the direction and with the consent of the defendant company.

(16) The plaintiff says that the said installations referred to by the said Oil Company in its said advertisements and prospectuses, and the "cracking" process claimed to be exclusively owned and operated by the Sinclair Company, and referred to in its said advertisements, were and are either the discoveries, inventions and pro- [fol. 51] cesses of the said Jenkins, now owned by the plaintiff, or are improvements, modifications and developments thereof devised and contrived by the defendant and its employes through the use of the said apparatus of the said Jenkins, and the said information, instruction and opportunities for investigation which were afforded to the said defendants under and in pursuance of the understandings had prior to the said second day of October, 1916, and in pursuance of the terms of the said agreement of October 2, 1916.

(17) The plaintiff says that any invention or process which enables a refinery to extract from the crude oil or heavier petroleum products a larger percentage of gasoline is a process of very great and increasing value, and the

plaintiff believes that a large part of the earnings of the said Oil Company, stated by it to have been in excess of $76,000,000, for the year 1919, was derived from the use of the said apparatus and process, and that a continually increasing amount of profits will from year to year arise from the use of the said apparatus and process by the said defendant and the said Oil Company and its other subsidiaries.

(18) The plaintiff says that the Sinclair Consolidated Oil Corporation, and the subsidiaries of said Sinclair Consolidated Oil Corporation other than the Sinclair Refining Company, are not within the jurisdiction of this court, and this plaintiff is informed and believes and therefore alleges that neither said Sinclair Consolidated Oil Corporation, nor any of its said subsidiaries other than the Sinclair Refining Company, is subject to the service of process within this district, or within the State of Maine, and therefore the plaintiff has not made such other Companies parties defendant to this its bill of complaint.

(19) Plaintiff states that this is a cause of action between citizens of different states, and that the amount of controversy exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

Wherefore, and inasmuch as this plaintiff is without remedy except by the aid of this Honorable Court, this plaintiff states that it is entitled to and prays that it may receive from this Honorable Court—

[fol. 52] (a) A decree directing the defendant to assign and transfer to this plaintiff the invention or improvements of the said Letters Patent of the United States, issued to Edward W. Isom, November 19, 1918, No. 1,285,200, together with all rights thereunder, and any and all patents in other countries or applications therefor relating to said improvements or invention, and all rights thereunder, and also to assign and transfer to the plaintiff all other improvements or inventions, whether of mechanical nature or relating to processes or methods which have been developed, or in the process of development as a result of the engineers, experts and other employes of the defendant company, in familiarizing themselves with the Jenkins ap-

paratus and processes, and all patent applications wherever pending or in course of preparation relating thereto; and that said defendant shall be required and decreed, so far as it is able to do so, to cause its engineers, experts and other employes to execute applications for patents in the United States and other countries, to protect any such improvements, the plaintiff hereby offering to pay the expense of such applications, and that the defendant be directed and decreed to itself assign, or cause its employes to assign said applications, together with the improvements which said applications are intended to protect, to the plaintiff.

(b) That defendant be required to disclose to the plaintiff the result of any and all experiments, tests and operations made or attempted by it or any of its experts, engineers, agents, employes and servants since the second day of October, 1916, relating to the process or apparatus described or disclosed in the United States Letters Patent to Jenkins, No. 1,226,526, Letters Patent to Jenkins, No. 1,321,749, and Letters Patent to Isom, No. 1,285,200, plaintiff's exhibits 1, 2 and 3, and to deliver to the plaintiff all records, books, documents and memoranda relating to such results, experiments or work, or in the alternative to permit the plaintiff, at its own expense, to make full and complete copies of all such records; and that plaintiff be given [fol. 53] access to the various plants of the defendant and its affiliated companies, to determine the extent and use of the apparatus and processes of the Jenkins and Isom patents, and any improvements thereon.

(c) That the defendant be required to account to the plaintiff for all profits which have accrued to it, or which have accrued to the Sinclair Consolidated Oil Corporation, or to any of the subsidiaries of the Sinclair Consolidated Oil Corporation arising out of the use of the process and apparatus disclosed and described in the Isom patent No. 1,285,200, or from the use of any improvements, whether of mechanical nature or in the process which has been developed as a result of the work of the engineers, experts and other employes of the defendant company in familiarizing themselves with the Jenkins apparatus and process.

(d) That the defendant be enjoined and restrained, provisionally and perpetually, from using in or about its said

business, or permitting any company associated or affiliated with it and having a common control with the said defendant, from using any of the said processes, inventions and improvements described or disclosed in the Isom patent No. 1,285,200, dated November 18, 1918, being Exhibit 3 to this bill of complaint, or from using any improvements, whether of mechanical nature or in the process which has been developed as a result of the work of the engineers, experts and other employes of the defendant company in familiarizing themselves with the Jenkins apparatus and process, or from so using any of the inventions, devices or improvements disclosed to the said defendant by the said Ulysses S. Jenkins and his associates, and by the experimental still, in pursuance of the said arrangements set forth in the contract of October 2, 1916.

(e) That the defendant be required to account to the plaintiff for all damages done the plaintiff by virtue of its violation of and failure to comply with the said contract of October 2, 1916, and defendant's and its associated or affiliated companies' representations to the public concerning the ownership of the said Isom patent and the other improvements of the said Jenkins apparatus and process.

[fols. 54–56] (f) That this cause may be referred to a Master to take, state and report an account of the profits and damages arising by reason of the said wrongful acts and doings of the defendant, and that plaintiff have judgment for the amount of profits and damages so found and reported, and the costs of this suit; and that said Master have all the powers conferred upon Masters by law and the rules in equity.

(g) That this plaintiff may have such other and further relief in the premises as it may be entitled to receive in a court of equity.

May it please this Honorable Court to grant a writ of subpœna in chancery in accordance with the rules and orders of this court directed to the said defendant, Sinclair Refining Company, requiring it to appear on a certain day before this court then and there full, true and direct answer to make to all and singular the premises, but not under oath, the answer under oath being hereby expressly waived, and further to perform and abide by such

further order, direction and decree herein as may be just and equitable and as to the court may seem proper.

And the plaintiff will ever pray, etc.

Jenkins Petroleum Process Company, by W. C. Black, President. Parkinson & Lane, Mayer, Meyer, Austrian & Platt, Its Solicitors. Wallace R. Lane, Henry Russell Platt, of Counsel.

Duly sworn to by W. C. Black. Jurat omitted in printing.

[fol. 57] EXHIBITS 1 AND 2 TO BILL OF COMPLAINT

(Here follow Exhibits 1 and 2 to Bill of Complaint, side folios 58 to 58-4 and 59 to 59-7)

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U. S. JENKINS.

METHOD OF OBTAINING GASOLENE AND OTHER LIGHT OILS FROM HEAVIER HYDROCARBONS.

APPLICATION FILED JULY 13, 1916.

1,226,526.

Patented May 15, 1917.

2 SHEETS—SHEET 2.

Fig. 2

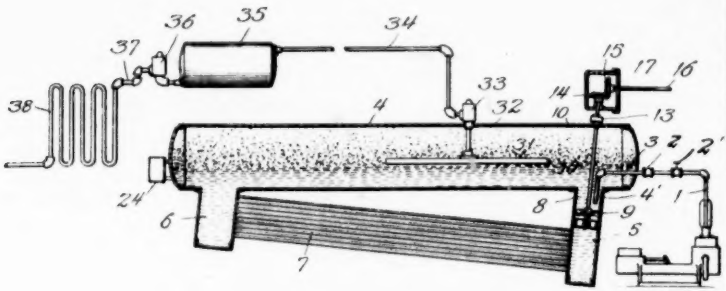


Fig. 4

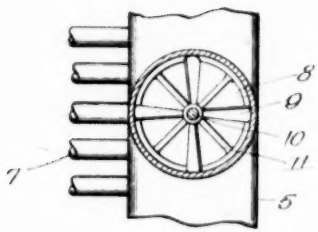


Fig. 3.

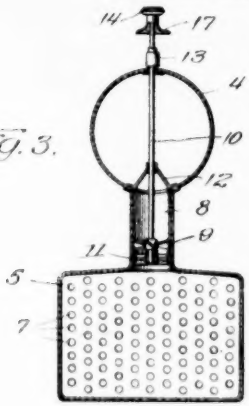
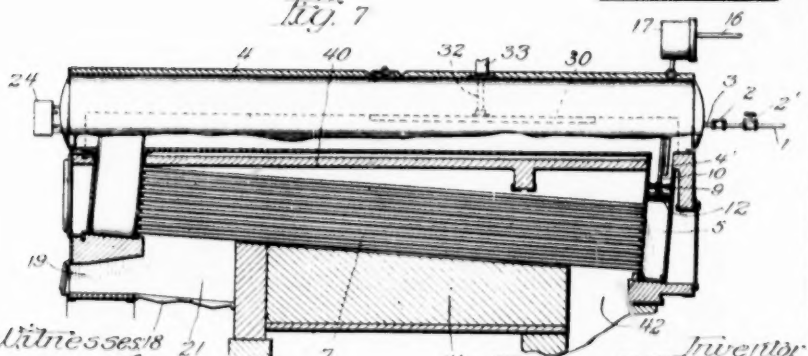


Fig. 7



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58-1

U. S. JENKINS.

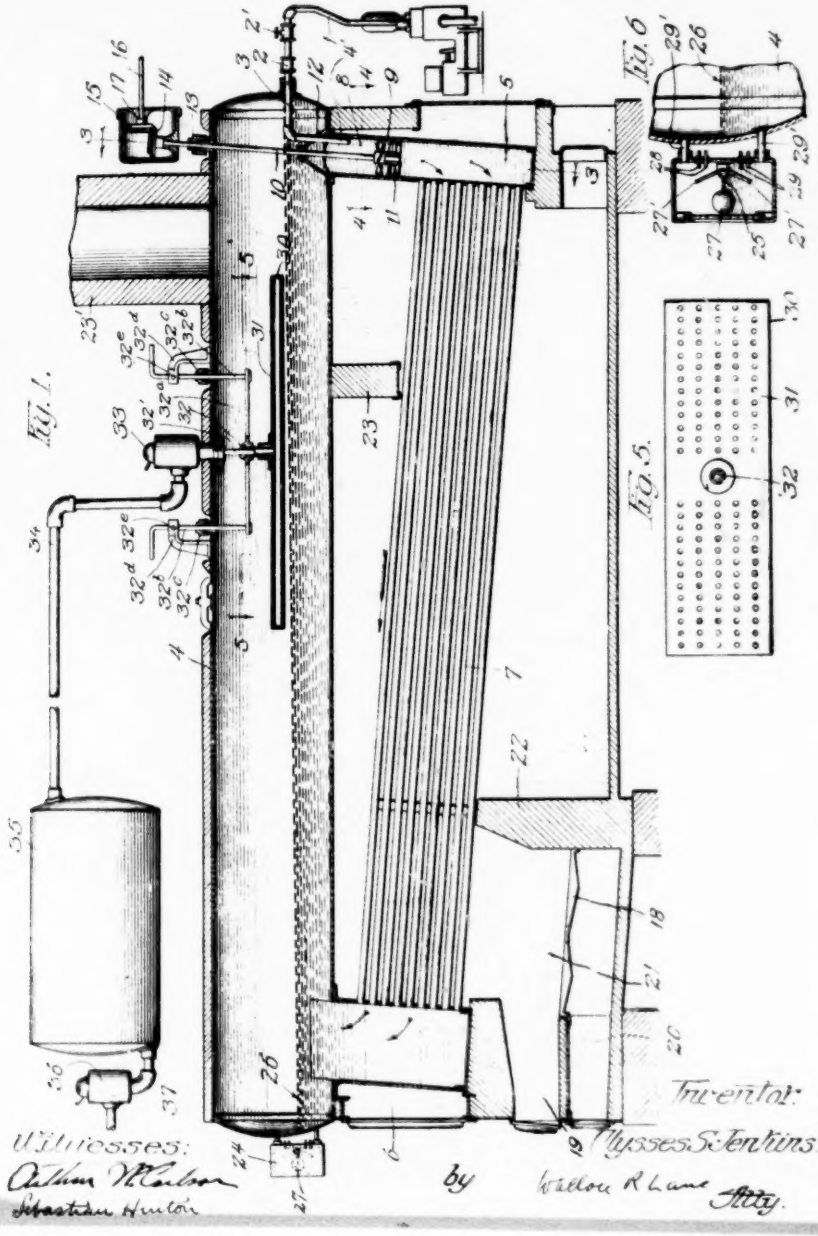
METHOD OF OBTAINING GASOLENE AND OTHER LIGHT OILS FROM HEAVIER HYDROCARBONS.

APPLICATION FILED JULY 13, 1916.

1,226,526.

Patented May 15, 1917.

2 SHEETS—SHEET 1.



Witnesses:
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Inventor:
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by Walton R. Lane Atty.

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UNITED STATES PATENT OFFICE.

ULYSSES S. JENKINS, OF CHICAGO, ILLINOIS, ASSIGNOR, BY MESNE ASSIGNMENTS, TO JENKINS PETROLEUM PROCESS COMPANY, OF MILWAUKEE, WISCONSIN, A CORPORATION OF WISCONSIN.

METHOD OF OBTAINING GASOLENE AND OTHER LIGHT OILS FROM HEAVIER HYDROCARBONS.

1,226,526. Specification of Letters Patent. Patented May 15, 1917.

Application filed July 13, 1916. Serial No. 108,983.

To all whom it may concern:

Be it known that I, ULYSSES S. JENKINS, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Methods of Obtaining Gasolene and other Light Oils from Heavier Hydrocarbons, of which the following is the specification.

This invention is for a method and apparatus for treating heavier hydrocarbons such as petroleum oils, and particularly a method and apparatus whereby a condensable, light oil may be obtained from petroleum and its by-products.

It is an object of my invention to provide a method for treating heavier hydrocarbons whereby they may be transformed with a minimum of waste through the production of permanent gases or of carbon, into gasolene and other condensable light by-products, it being entirely unnecessary to empty and refill stills or the like to treat separate charges of the petroleum oil, the process being continuous from beginning to end, so that the heavier hydrocarbons may flow continuously through pipes from the source of supply to the apparatus in which its treatment is carried out and a substantially equal quantity of light, condensable oil, such as gasolene, will flow continuously from that apparatus.

Another object of the invention is to provide apparatus whereby the conversion of heavier hydrocarbons may be carried out and in which circulation is so controlled and effected that deposit of carbon will be reduced to a negligible amount.

Other features of novelty, advantages and capabilities will become apparent from the detailed description of the accompanying drawings, in which I have illustrated a device embodying one form of my invention, and one which can be used for carrying out my new and improved method, but the construction there shown is to be understood as illustrative only and not defining the limits of my invention.

Figure 1 is a sectional elevation of apparatus designed for carrying out my improved method. Fig. 2 is a diagrammatic view illustrating the course of treatment of the heavier hydrocarbons. Fig. 3 is an end elevation of a positive circulatory apparatus. Fig. 4 is a top plan view of the pump construction. Fig. 5 is a top plan view of the collecting device for the gases. Fig. 6 is a vertical sectional view of the controller for maintaining a constant level in the boiler, and Fig. 7 is a modification of a device embodying my invention.

In the drawings, the heavier hydrocarbon is pumped from the source of its supply through the feed pipe 1, in which is the check valve 2, control valve 2′, and through the inlet pipe 3 terminating in a downwardly directed portion 4′ inside the still. The still comprises a strongly reinforced tank or barrel 4, having depending legs 5 and 6, connected by a series of tubes 7, which slope upward as shown.

The rear or lower leg of the boiler comprises an enlarged chamber 5, which is connected to the barrel 4 by a circular passageway 8, in which is mounted a propeller 9 upon the shaft 10, having a bearing at its lower end upon the spider construction 11, passing through the spider 12 and passing out through the barrel through stuffing box 13, and equipped at its top with a bevel gear 14, in mesh with which is a bevel gear 15 upon a power shaft 16, the bevel gears 14 and 15 being preferably incased in the housing 17.

Below the still, comprising the barrel 4, legs 5 and 6 and tubes 7, supporting and inclosing this construction, is a fire box, comprising grates 18, fuel inlet passage 19, ash pit 20, fire box 21, the fire being confined at its rear by the baffle 22, so that the products of combustion sweep upwardly and backwardly along around the tubes, being directed downwardly by the baffle 23 and then permitted to whirl up again at the rear of the device, out around the barrel and through the flue 23′. By this means a uniform, graduated degree of heat is maintained throughout a substantial portion of the length of the tubes 7, which serves to efficiently heat the liquid flowing through these tubes.

From the description so far given, it will be understood that the supply of heavier hydrocarbons flowing in through feed pipe 1, controlled by valve 2, and being directed behind the propeller 9 is mechanically forced or pumped downwardly in leg 5 and then upwardly through the tubes 7, and through

the leg 6 and into the barrel 4. This positive driving or pumping of the fluid causes a controlled and rapid circulation of the entire liquid contents of the still around or back through the barrel 4, down leg 5, up through the barrel tubes, through leg 6 and back into the barrel again.

It is to be particularly noted that the leg 6 is made larger than the leg 5, the purpose of this being to accommodate the expansion of liquid, which takes place in the tubes 7, particularly at or near their upper ends, and to prevent the possibility of a flare back, which is apt to occur if the enlarged and ebullient volume of hotter fluids must be confined in a leg of the same size as that which holds the more condensed and non-ebullient fluid, *i. e.*, the leg which precedes the tubes. By the provision of enlarged leg 6, as well as by the mechanically forced rapid circulation induced by the propeller 9, this flaring back of gases and vapors into the lower leg 5 is prevented.

I maintain the liquid level in my apparatus constant. This is done by means of a level indicator and controller 24, (see Fig. 6) comprising a bracket 25, to which is pivoted at the level point 26, a float 27, having contacting arms 27', the apparatus being so constructed that if the float 27 rises, one of the arms 27' will be rocked backwardly to close a pair of contacts 28, whereas if the float falls, the other arm 27' will be rocked in the opposite direction to bridge a pair of contacts 29. The level controller is in open communication with the barrel 4 by the hollow supporting tubes 29' and is provided with a glass face, as shown. By causing the bridging of one pair of contacts to flash a red light, while the bridging of the other pair flashes a blue light, or by direct electrical control thereby of the feed valve 2', or by other means well known in the art, I maintain the level in the barrel at a constant point, the form of level indicator being entirely immaterial, any efficient form being equally well employed.

Suspended from the top of the barrel 4 is a gas and vapor collector, comprising a large, flat hollow container 30, imperforate at its bottom and sides but having a perforated top 31, the interior being in communication with the pipe 32, which is telescopically connected to the pipe 32', leading out of the barrel 4 through the adjustable pressure relief valve 33, such valves being well known in the art, and no detailed showing thereof being necessary. From the pressure relief valve the gases and vapors flow through the pipe 34 to the expansion chamber 35 and thence through the pressure relief valve 36 and pipe 37 to a condenser 38, from which gasolene and other light by-products may be drawn. It is particularly to be noted that the collector 30 is suspended low in the barrel 4, quite near to the level of the liquid in the barrel 4. The gas and vapors collector or container 30 is adapted to be moved upwardly or downwardly so as to take off gases and vapors of different densities as desired. To effect this adjustment, the pipe 32 is rigidly connected at one end to the gas and vapor collector 30 and its opposite end passes through the journal in the arm 32^a and is provided at its extreme end with an outwardly extending flange adapted to rest on the arm 32^a so as to move upwardly therewith. For raising and lowering the arm 32^a and gas collector 30, I provide a pair of rods 32^b, which extend upwardly through stuffing boxes 32^c and thence upwardly through openings in the supporting arms 32^d, which arms are provided with set screws 32^e. From this it will be seen that by merely unscrewing the set screws and grasping the handles of the rods 32^b, the gas and vapor collector may be raised or lowered as desired, and after being moved to the desired position there held by tightening the set screws.

In operation, the liquid contents of the still are rapidly circulated around through the barrel, depending legs and tubes of the apparatus while a brisk fire is maintained on the grate 18. The result will be the release of gaseous and vaporous products and the generation of pressure in the apparatus, evolved gases and vapors collecting in the space above the constant liquid level in the barrel 4, wherein they will tend to arrange themselves at least temporarily according to their densities—that is to say, the lighter gases and vapors will take position near the top of the barrel 4 and the heavier gases and vapors collect below them, so that the average density of the gases and vapors at different levels will be different. The temperature of the reaction may, of course, be controlled by controlling the fire in the fire box. The pressure in the apparatus is controlled by the adjustable pressure relief valve 33, which is set to maintain the pressure in the apparatus at a point which, in combination with the temperature and the time of treatment, will result in the most efficient transformation and conversion of the heavier hydrocarbons being treated into the desired product. The evolved gases and vapors under whatever pressure the pressure relief valve 33 is set for, are selectively tapped by means of the gas and vapor collector 31, which may be set at any level in the barrel 4 to take off relatively heavier or lighter gaseous and vaporous products as desired, and which would tend to increase the proportion of permanent gases such as hydrogen, which will naturally tend to collect near the top of the barrel 4, in the apparatus, while continuously taking off therefrom heavier condensable gaseous and va-

porous products such as gasolene. By controlling pressure, temperature and rate of circulation in the apparatus, the conditions required for the complete transformation of the heavier hydrocarbons into the desired product can be obtained.

For instance, if I set the pressure relief valve 33 at 200 pounds, a constant pressure of approximately 200 pounds will be maintained in the apparatus, and the transformations which will occur by reasons of the controlled temperature, and pressure, will take place continuously in the still, new heavier hydrocarbons being supplied as required through feed pipe 1 to maintain a constant liquid level in the barrel 4, as that which preceded it is transformed into light oil. In actual operation, the entire process occurs smoothly and quietly, the oil flowing rapidly around and around through the apparatus, and condensable gases and vapors continuously flowing off through the collector 30.

The gases and vapors passing through the pipe 34 are permitted to expand against a low pressure of say, for instance, ten pounds, controlled by the pressure relief valve 36, in the expansion chamber 35, and are thus effectively reduced in temperature, after which they are passed through condensers and liquefied in a common and well known manner.

An important feature of the invention is the mechanical circulation of the product through the tubes 7. By means of this mechanical circulation, the deposit of carbon in these tubes is rendered practically impossible. This deposit, which is unavoidable and constitutes a very serious and expensive trouble in the operation of petroleum stills heretofore made, is caused by the fact that the liquid cannot be made to pass rapidly enough through the heated tubes, and passing slowly over these hot tubes, it is "cracked" too fine, with the resulting release of a large proportion of permanent gas and the resulting deposit of carbon. By means of the positive circulatory system, the liquid may be made to circulate at any desired speed, absolutely preventing its being suddenly heated or over-heated at any point, no matter how hot the fire may be, which practically prevents the deposit of carbon.

In Fig. 7 I have shown a modification in which I provide a shield 40 between the fire and the barrel 4 so that the entire heating must be effected by means of the tubes 7. In this modification the space underneath the tubes is filled up solid as shown at 41. The flames, passing down around the tubes, escape through flues 42, surrounding but separated from the barrel. This method of treatment may sometimes be preferable.

Having now described my invention, I claim:—

1. The method of obtaining light oil from heavier hydrocarbons which consists in heating said heavier hydrocarbons in a still, maintaining pressure in said still, permitting gases and vapors of greater average density than that of the lowest produced in said still, to escape at selective points below the top of the chamber, subsequently condensing said vapors and forcing fresh heavier hydrocarbons into said still to make up for that transformed into said vapors.

2. The method of obtaining light oil from heavier hydrocarbons which consists in forcing heavier hydrocarbons into a still, heating said heavier hydrocarbons in the still whereby the same will be vaporized and gasified and the vapors will arrange themselves temporarily according to their densities, tapping said gases and vapors at a point where a comparatively large proportion of condensable gases and vapors is found by pressure relief means adapted to maintain the pressure in the still at a point conducive to the most complete conversion of the heavier hydrocarbons into a light oil.

3. The method of obtaining gasolene and other light oils from heavier hydrocarbons consisting in pumping the hydrocarbons into a still, forcing the same through heated tubes inclined upwardly from the receiving to the delivery end thereof, and through a circulating chamber connecting the receiving and delivery ends of the tubes whereby the entire liquid contents of the still will be in constant circulation through the tubes and chamber and the vapors and gases will constantly be evolved from the liquid, then taking the vapors thus generated from a level above the liquid most conducive to a complete removal of the condensable vapors and below the top of the chamber, substantially as described.

4. The method of treating heavier hydrocarbons, which consists in causing the entire body of the same to circulate simultaneously through a chamber and heating devices in succession applying heat to said heating devices and drawing off selectively from said chamber evolved gases and vapors of greater average density than the lightest produced in the chamber.

In witness whereof, I hereunto subscribe my name to this specification in the presence of two witnesses.

ULYSSES S. JENKINS.

Witnesses:
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59

U. S. JENKINS.

APPARATUS FOR TREATING PETROLEUM PRODUCTS.

APPLICATION FILED SEPT. 27, 1916.

1,321,749.

Patented Nov. 11, 1919.

2 SHEETS—SHEET 2.

Fig. 3.

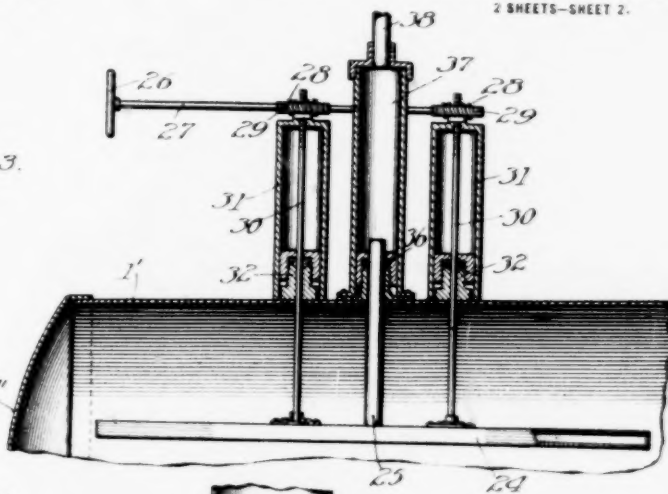


Fig. 4.

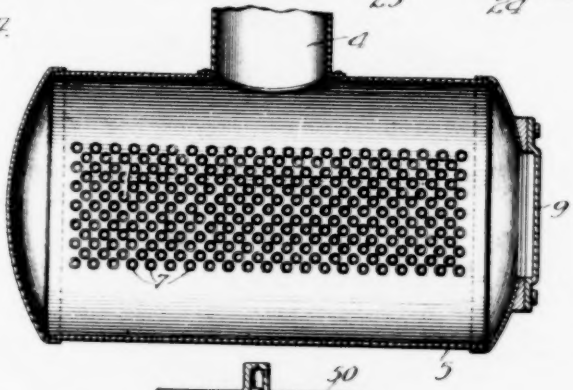
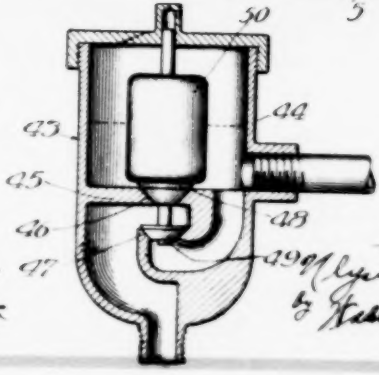


Fig. 5.



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606

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APPARATUS FOR TREATING PETROLEUM PRODUCTS.

APPLICATION FILED SEPT. 27, 1918.

1,321,749.

Patented Nov. 11, 1919.

2 SHEETS—SHEET 1.

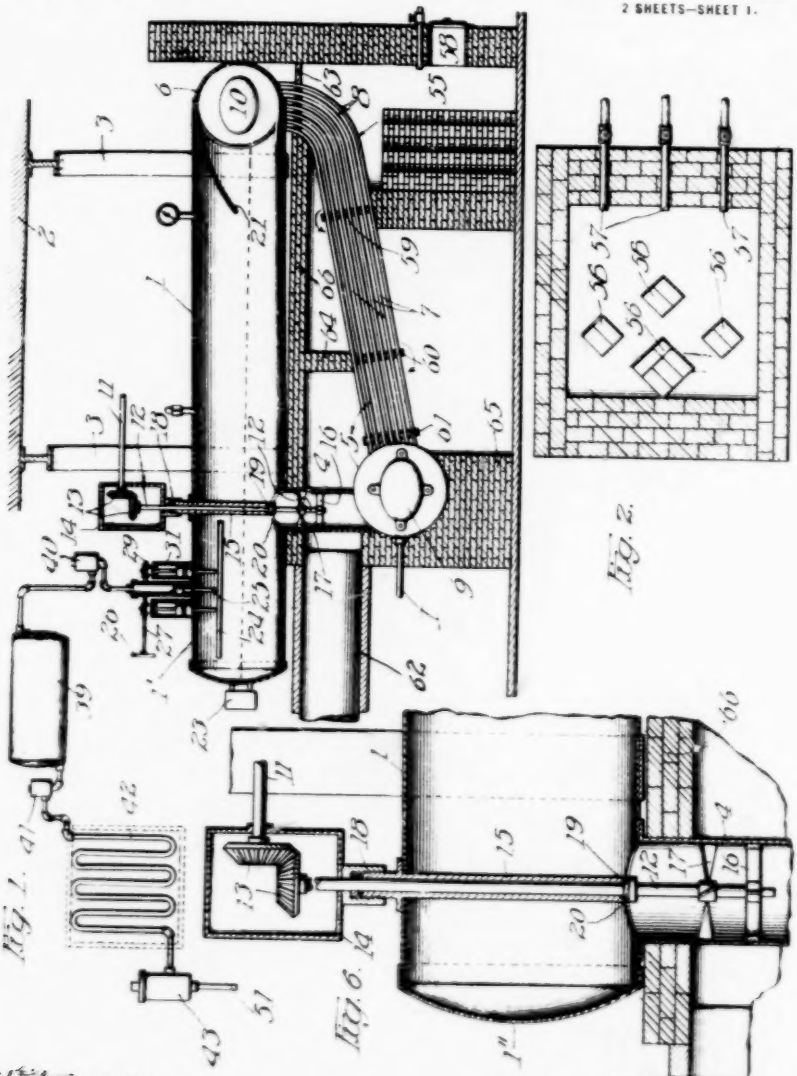

Fig. 1.

Fig. 2.

Fig. 6.

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By Wallace R. Lane
Atty.

UNITED STATES PATENT OFFICE.

ULYSSES S. JENKINS, OF CHICAGO, ILLINOIS.

APPARATUS FOR TREATING PETROLEUM PRODUCTS.

1,321,749. Specification of Letters Patent. Patented Nov. 11, 1919.

Application filed September 27, 1916. Serial No. 122,333.

To all whom it may concern:

Be it known that I, ULYSSES S. JENKINS, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Apparatus for Treating Petroleum Products.

This invention relates to apparatus for treating petroleum products, and has for an object the accomplishment of the method disclosed in my co-pending application, Serial No. 108,983, for treating heavier hydrocarbons, such as petroleum oils, whereby the condensable light oil may be obtained from petroleum and its by-products.

It is a further object of my invention to provide means for treating heavier hydrocarbons whereby they may be transformed with a minimum of waste through the production of permanent gases or of carbon into gasolene and other condensable light by-products, it being entirely unnecessary to empty and re-fill stills or the like to treat separate charges of the petroleum oil, the process being continuous from the beginning to the end, so that the heavier hydrocarbons may flow continuously through pipes from the source of supply to the apparatus in which its treatment is carried out, and a substantially equal quantity of light, condensable oil, such as gasolene, will flow continuously from that apparatus; further, to provide apparatus whereby the conversion of heavier hydrocarbon may be carried out and in which circulation is so controlled and effected that the deposit of carbon will be reduced to a negligible amount.

It is a further object of this invention to improve the construction of a gas generating apparatus involving circulatory tubes whereby the circulation is rendered more simple and the liability of its being ruptured under extreme conditions of heat and temperature are reduced.

It is another object of this invention to provide apparatus of the class described in which a quiet region is provided for the gas take-off in combination with the gas take-off apparatus adapted to selectively take off gases generated in the still.

It is another object of my invention to provide improved firing and fire control in the apparatus described.

It is another object of my invention to provide a distilling system whereby liquid is fed into the system and liquid taken off therefrom, substantially no gas being permitted to escape at any stage of the process.

Other objects and advantages will appear as the description to follow proceeds.

In the drawings:—

Figure 1 is a partly cross sectional elevation of my apparatus, partly diagrammatic;

Fig. 2 is a cross sectional plan view showing the firing chamber;

Fig. 3 is an enlarged detail cross sectional view showing the control for the gas take-off;

Fig. 4 is a cross sectional elevation of the mud leg construction;

Fig. 5 is a cross sectional view of the gas closure valve;

Fig. 6 is a cross sectional fragmentary view of a modified construction showing the drum 1 otherwise as in Fig. 1 but terminating near the edge of the furnace instead of projecting beyond the same.

In the drawings, 1 represents the barrel or drum of a still, suspended from an overhead support 2 by a plurality of straps 3 so as to impose no weight whatever upon the brickwork underneath it which serves solely to confine and direct the flames. The barrel 1 of the still is provided at its rear end with a circular depending mud leg 4, which feeds into the transverse drum 5 of substantially the same diameter as the barrel 1. The product to be treated is pumped under pressure through the inlet pipe I into the crosshead 5. Another transverse drum 6 is arranged across the forward end of the still and in open communication therewith, and a large number of tubes 7 are welded at their ends to the two crossheads 5 and 6 and to the bottom of the drum 1 where the bottom of this drum intersects and overlies the periphery of the crosshead 6.

The tubes 7 are bent, as indicated at 8, so as to afford a smooth and easy passage for liquid flowing from crosshead 5 into crosshead 6. This arrangement of the tubes is important and advantageous for the reason that the gradual bend in the tubes at the point 8 in effect affords at the upper end of the tubes a large chamber comprising the entire inside of the barrel 1, whereas at the foot of the tubes the liquid is compelled to

pass through the connecting leg 4 which is of smaller diameter than cross head 6 and the depending leg 4 which is completely filled with liquid so that as the liquid passes upward through these tubes and is subjected to the increasing heat of the fire, its expansion and ebullition will take place in the large unconfined chamber comprising the drum 1, whereas the cooler contracted liquid is in the smaller connecting leg 4 in which the liquid is more confined. The bend has another important function in that it serves to take up the expansion or contraction of the tubes 7 without placing strain on the welded joints by which they are welded to the crossheads 5 and 6. If straight tubes are used, expansion and contraction serves to put undue strains upon their joints or the points of union at their ends.

The construction thus disclosed has other advantages, in that a single manhole cover 9 or 10, one upon either of the crossheads, may be used to admit a workman to the interior of either of the crossheads, from which point all of the tubes 7 may be cleaned by a flexible cleaner of the kind well known without the necessity of removing the cap of each individual tube. This of course renders the whole apparatus safer and easier to manipulate and reduces the liability of leakage or rupture.

I have provided a mechanical circulatory apparatus comprising a shaft 11, driving the shaft 12 through means of beveled gears 13 in the housing 14, the shaft 12 passing downwardly through a sleeve 15 into the tubular mud leg 4, in which it has a bearing in the spider 16, and in which is located the propeller 17, so that by this mechanical circulatory apparatus liquid in the still can be made to circulate back from the front as far as the mud leg 4, down this mud leg, up the inclined tubes and back again as rapidly as desired.

I have devised a novel self-sealing connection for the shaft 12 to absolutely prevent the escape of any gas therethrough, while at the same time this shaft is permitted to rapidly and easily rotate. The shaft 12 is freely revoluble in the sleeve 15, which is equipped at its upper end with a gland 18, packed as customary. At its lower end, the sleeve 15 has a preferably phosphor-bronze insert 19, against which is seated the conical face of the shoulder 20 on the shaft 12. It is obvious that the pressure generated in the still will cause the conical face of the shoulder 20 to bear against the phosphor-bronze insert 19 and afford a self-sealing, absolutely tight joint, which at the same time is always lubricated because it is under the surface of the liquid level in the still.

The liquid circulating rapidly through the still might tend to cause a serious disturbance at the front thereof as it boils up out of the pipes 7, which disturbance, unless more or less checked, might tend to prevent the absolute quietness I desire to produce at the rear end of the still. To serve this purpose, I provide a baffle 21, as indicated, which prevents any serious disturbance from running back along the still from its front, the liquid boiling up out of the tubes 7 striking this baffle 21 and quietly dropping into the liquid in the barrel 1.

It is an important feature of the invention that I carry the barrel 1 of the still considerably back beyond the mud leg 4, as indicated by the extension 1', at the end of which I preferably place the liquid level indicator 23 to indicate the level of the liquid in the still as explained in my co-pending application. This extension on the still serves an important purpose inasmuch as it provides a quiet pool beyond the rapid circulatory system, the circulation reaching back only as far as the mud leg 4 so that gases and vapors generated in the still and flowing out of the liquid both out of the upper end of the pipes 7 and along the body of the still may collect in an absolutely undisturbed place free from currents, eddies, or the like so as to encourage as much as possible the arranging of the vapors and gases in layers, which is an important feature of my invention. In other words, the light gases and vapors generated in the still, while they may be more or less mixed up with the heavier gases and vapors at the front end thereof, where there is violent agitation, by the time they have flowed back to the utterly undisturbed rear projection 1' on the still, have assumed a higher position than the heavier gases and vapors so that they are fairly well separated. I provide a collector 24 comprising a wide flat, box-like construction having holes in its top, which may be vertically adjusted by means of the handle 26, shaft 27, worms 28, operating worm wheels 29 fast upon screw threaded shafts 30 operating in sleeves 31 and packed by glands 32, as indicated. Shafts 30 are fastened at their lower ends to the gas collector 24. The interior of the gas collector 24 is in communication through pipe 25 passing through glands 36 with the interior of the sleeve 37, which communicates with the pipe 38 carrying the gases through an expansion chamber 39 by way of pressure relief valve 40, where the gases may expand passing therefrom through the pressure relief valve 41 into a condenser 42. At the outlet side of the condenser 42 is a gas retaining valve 43, shown in enlarged cross sectional detail in Fig. 5, comprising a casing 44 having a web 45 therein which makes two seats 46 and 47 in which are respec-

tively seated the two valves 48 and 49 upon the shank of the float 50. This valve is adapted to permit liquids to escape but will seal the apparatus against the escape of any gas whatever. Specific details of its construction are not involved in the present invention but are disclosed in the patent to Poindexter No. 1,146,276, issued July 13, 1915, a feature of the invention here involved, however, being the application of such a valve or its equivalent to a still of the character being described.

By the mechanism just described, it is readily perceived that the pressure relief valve 40 having been set to any desired pressure that pressure will be maintained continually in the still and the collector 24 may be set at a level to take off from the quiet region in the still, wherein there is no circulation and no disturbance and where the gases and vapors may arrange in layers, the particular gases and vapors desired for condensation, leaving the other gases and vapors in the sphere of the reaction where, by the well known theory of mass reaction, they will prevent the formation of any more gases and vapors of their own kind. The result of this operation is that continued operation of the still will transform a very large proportion or all of the fuel supplied to the still into the particular gases and vapors being taken off through the collector 24 and, if desired, into condensable gases and vapors which are cooled in the expansion chamber 39, pass through the pressure relief valve 41, preferably set quite low, pass through the condenser 42, and run out from the outlet 51.

It is an important feature of the invention that substantially no hydrogen or other gas is permitted to escape from the process. The provision of a special means to this end is of the greatest advantage. The contemplated purpose of my new still is to transform heavy petroleum product into light condensable oil such as gasolene and the like, these oils preferably consisting of saturated hydrocarbons. The crude petroleum products contain the constituents required to make a relatively large quantity of light gasolene if all of the constituents of the product being treated can be maintained in the reaction and none of the light gases escape. It is because of the escape of light gases, such as methane and hydrogen, robbing the product undergoing treatment of a disproportionate amount of hydrogen, that in ordinary processes a great deal of carbon is deposited and a small percentage of gasolene and light fractions can be obtained. Substantially all the permanent gases and hydrogen permitted to escape result in a corresponding amount of unsaturated hydrocarbons and deposited carbon. In my apparatus, therefore, by providing the gas retaining valve 43 at the end of the process, I make it substantially impossible for any permanent gas to escape from the system, so that I keep substantially all of the hydrogen in the product being treated to saturate the resulting hydrocarbon compounds and permit none of the hydrogen to be wasted with the resulting product of unsaturated hydrocarbon compounds and deposit of carbon.

To heat the still, I provide a fire chamber 55 in which are arranged a number of preferably square piers 56 of different sizes, against the corners of which fuel is driven at a high velocity out of the feed nozzles 57, the air for combustion entering through the opening 58. The streams of fuel out of the nozzles 57 will strike angularly upon the piers 56 and ricochet from one pier to another and up against and off the walls of the fire chamber, being thus broken into the finest possible particles, and thus completely and most efficiently consumed. Of course a coal, or any other kind, of fire might be employed instead of the firing arrangement just described, but I believe this to be a very efficient and inexpensive arrangement particularly adapted to refineries and petroleum treating plants, wherein liquid fuel is cheaply available. The hot gases and flames from the fire pass upwardly around the pipes 7, as indicated by the arrow, over a baffle 59, down behind a baffle 60, up in front of the baffle 61, and out through the flue 62. A baffle 63 is provided which prevents the hottest flames from striking the cross-head 10 or the unions at the upper ends of the pipes 7. The baffle 64 is also provided to force the stream from the fire to take the undulatory path just described. The furnace is confined at its rear and sides by the brickwork 65, and the barrel of the drum 1 is entirely baffled away from the fire by the brickwork 66 so that nothing is subjected to the direct heat of the fire except the reach of the tubes 7 between the baffles 61 and 63.

In the modification represented by Fig. 6 the projection of the drum beyond the edge of the furnace is omitted and a space is afforded above the level of the liquid hydrocarbons in which the gases and vapors given off will be confined substantially at rest out of the line of circulation of the liquid hydrocarbons, such gases and vaporous products tending to temporarily arrange themselves therein according to their densities, the lighter at the top and the heavier below.

I claim:

1. In apparatus for obtaining light oil from heavier hydrocarbons, a still in which said hydrocarbons may be heated to evolve gases and vapors, means for maintaining pressure in said still, means for removing the

gases and vapors of greater average density than that of the lowest produced in the still, said last mentioned means being adjustable whereby to remove said gases and vapors at selective points below the top of the still, and mechanical means for creating a positive circulation of the liquid contents of said still.

2. In apparatus for obtaining light oil from heavier hydrocarbons, a still in which said hydrocarbons may be heated under pressure to evolve gases and vapors, vertically adjustable means for removing the gases and vapors at selective points above the surface of the liquid contents of the still, and a mechanical circulatory apparatus for creating a positive circulation of said liquid contents, to increase the amount of gas and vapor evolved, and prevent the deposit of carbon on the still surfaces.

3. In apparatus for obtaining light oil from heavier hydrocarbons, a drum having a passage depending therefrom, inclined tubes connecting said passage back to the drum, means for causing the entire body of liquid to positively circulate simultaneously down said passage, upwardly through said inclined tubes, and back through said drum to evolve gases and vapors, and means for selectively drawing off evolved gases and vapors of greater average density than the lightest produced in the drum.

4. In apparatus for obtaining light oil from heavier hydrocarbons, a drum having a passage depending therefrom, inclined tubes connecting said passage back to the drum, and a mechanical circulatory apparatus in said depending passage adapted to cause a positive circulation of the liquid hydrocarbons down said passage, upwardly through said inclined tubes, and back through said drum to said passage, and vertically adjustable means for removing the gases and vapors at selective points below the top of the drum.

5. In apparatus of the class described, a firebox, a drum, a passage depending therefrom, means to circulate liquid in said drum, down said passage, said drum being extended beyond said passage to afford a portion out of direct contact with the heat from the firebox to afford a quiet region in which there is practically no circulation.

6. In apparatus of the class described a firebox, a drum, a passage depending therefrom, inclined boiler tubes connecting said passage back to said drum, and means to cause a circulation down said passage upwardly through said inclined tubes, and back to said passage, said drum being provided with an extension beyond said passage to afford a quiet region in the still, in which the evolved vapors will arrange themselves temporarily according to their densities, said extension being out of direct contact with the heat from the firebox.

7. In apparatus of the class described, a firebox, a still, means for causing the positive mechanical circulation of the liquid therein, and an extension on said still out of direct contact with the heat from said firebox to maintain liquid in a quiet state, substantially undisturbed by said circulation.

8. In apparatus of the class described, a firebox, a still adapted to convert liquids into gases, means for causing a positive circulation in said still out of direct contact with the heat from said firebox, an extension on said still to provide a quiet region independent of said circulation, and a gas take-off apparatus adapted to take off gas above said quiet region.

9. In apparatus of the class described, a firebox, a still, circulatory means to cause positive circulation therein, means for maintaining a portion of the liquid in said still out of the range of said mechanical circulation and of the direct heat from the firebox to form a quiet region and in open communication with the remainder of the liquid in said still, and a gas take-off located in the quiet region.

10. In apparatus of the class described, a still adapted to convert liquids into gases and vapors, a circulatory system in said still, a quiet region in said still to permit said gases and vapors to arrange themselves temporarily according to their respective densities, and take-off means to selectively take off gases and vapors from said quiet region.

11. In apparatus of the class described, a still, a circulatory system therein, a quiet region therein adapted to permit the evolved gases and vapors to arrange themselves temporarily in layers according to their densities, and take-off means comprising a collector in open communication with the pipe leading out of said still, and means to adjust said collector vertically to take off gases and vapors from different strata of said quiet region.

12. In apparatus of the class described, a still, a circulatory system therein, a quiet region in said still out of the range of circulation to permit the evolved gases and vapors to arrange themselves temporarily according to their densities, and vertically adjustable means in said quiet region to selectively take off said stratified gases and vapors.

13. In apparatus for obtaining light oil from heavier hydrocarbons, a still in which said hydrocarbons may be heated under pressure, said still comprising a drum having a downwardly extending passage, a crosshead at the lower end of said passage, a crosshead in said drum, inclined tubes con-

necting said crossheads, circulatory apparatus in said passageway for causing a positive and simultaneous circulation of said heavier hydrocarbons down said passageway, upwardly through said inclined tubes and back through said drum, and a vertically adjustable take-off for removing at selective points below the top of the drum evolved gases and vapors of greater average density than that of the lowest produced in said still.

14. A still comprising a portion adapted to be subjected to gas vapor generating influences and a chamber connected with said still adapted to permit the gases and vapors generated to flow thereinto and arrange themselves temporarily in layers according to their densities, and a take-off to selectively tap the gases and vapors of desired density.

15. In apparatus for obtaining light oil from heavier hydrocarbons, a still comprising a horizontal drum, a furnace, a series of heating tubes passing through the furnace, connections establishing communication between the respective ends of the tubes and the drum, said drum being adapted to contain a comparatively shallow elongated uninterrupted moving body of heavier hydrocarbons, which also fills said tubes and connections, mechanical means outside the drum to cause the main body of the heavier hydrocarbons to simultaneously and rapidly circulate through said drum, tubes, and connections, to successively apply heat thereto for increasing the amount of gases and vapors evolved and preventing the deposit of carbon on the passage walls.

16. A still for treating heavier hydrocarbons to obtain light oil therefrom, comprising a chamber, a series of heating tubes outside said chamber, mechanical means for simultaneously circulating the main body of liquid hydrocarbons through the heating tubes and mechanically uninterruptedly through said chamber, means for directly heating the liquid hydrocarbons in the tubes while circulating it, and means above the circulating liquid hydrocarbons for drawing off the evolved gases and vapors as and for the purposes set forth.

17. A still for treating heavier hydrocarbons to obtain light oil therefrom, comprising a chamber, a series of heating tubes outside said chamber, mechanical means for simultaneously circulating the main body of liquid hydrocarbons uninterruptedly while passing through the heating tubes and said chamber, means for directly heating the liquid hydrocarbons in the tubes while circulating it, means above the circulating liquid hydrocarbons for drawing off the evolved gases and vapors, and means for feeding heavier hydrocarbons into the still to maintain the level of the liquid in said chamber, substantially constant while circulating the liquid hydrocarbons.

18. In apparatus for obtaining light oil from heavier hydrocarbons, a still comprising a drum, a series of tubes, means for heating the tubes, connections establishing communication between the respective ends of the tubes and the drum, said drum adapted to contain a body of heavier hydrocarbons which also fills said tubes and connections, a rapidly rotating propeller between the drum and tubes to cause the main body of the heavier hydrocarbons to simultaneously circulate through said drum, tubes and connections to successively apply heat thereto for increasing the amount of gases and vapors evolved and preventing the deposit of carbon on the passage walls, and means for feeding the heavier hydrocarbons into the still while circulating the hydrocarbons therein.

19. In apparatus for obtaining light oil from heavier hydrocarbons, a still in which liquid hydrocarbons may be treated under pressure to evolve gases and vapors, a mechanical circulating apparatus creating a forced circulation of said liquid contents, said still comprising a series of heating tubes and a drum through which said liquid hydrocarbons pass uninterruptedly in said forced circulation, said drum having a space above the body of liquid and out of the line of said forced circulation in which the gases and vapors evolved are temporarily retained in a substantially quiet zone while the simultaneous circulation of the main body of the liquid through the drum and tubes proceeds, means for drawing off said gases therefrom, and means for forcing heavier hydrocarbons into the still while circulating the liquid contents in the still, and continuing uninterruptedly the withdrawal of said evolved gases and vapors.

20. In apparatus for obtaining light oil from heavier hydrocarbons, a still in which liquid hydrocarbons may be treated under pressure to evolve gases and vapors, said still comprising a drum, a series of tubes, and passages connecting the ends of said tubes with said drum, and a mechanical circulating apparatus outside the drum for creating a forced circulation of said liquid contents uninterruptedly through said drum and supplying sufficient liquid to fill each tube of the series to its full capacity under an excess pressure at the entry end of the tubes, thereby causing a simultaneous circulation of the liquid through all of said tubes and said drum.

21. In apparatus for obtaining light oil from heavier hydrocarbons, a still in which liquid hydrocarbons may be treated under pressure to evolve gases and vapors, said

still comprising a drum, a series of tubes, and passages connecting the ends of said tubes with said drum, and a mechanical circulating apparatus outside the drum for creating a forced and mechanically uninterrupted circulation of said liquid contents through said drum and supplying sufficient liquid to fill each tube of the series to its full capacity under an excess pressure at the entry end of the tubes, thereby causing a simultaneous circulation of the liquid through all of said tubes and said drum, said circulating apparatus comprising a propeller mounted in the passage connecting the front end of the tubes with the drum.

In witness whereof I hereunto subscribe my name to this specification in the presence of two witnesses.

ULYSSES S. JENKINS.

Witnesses:
T. S. BLACK,
A. G. MAGUIRE.

Exhibit 3 attached to this bill is Patent No. 1,285,200 and is identical with Exhibit D attached to bill for discovery. See page 24 of this record.

[fol. 60] IN UNITED STATES DISTRICT COURT

ANSWER TO ORIGINAL BILL, No. 816—Filed July 25, 1921

The defendant, Sinclair Refining Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, answering the Bill of Complaint herein says:

First. It has no knowledge sufficient to constitute a belief as to the allegations of paragraph 1 of said Bill of Complaint.

Second. It admits the allegations of paragraph 2 of said Bill of Complaint.

Third. In answer to said paragraph 3 of said Bill of Complaint, the defendant admits that the Sinclair Consolidated Oil Corporation is a corporation organized under the Laws of the State of New York and is a citizen and resident of the State of New York and is the owner of certain of the shares of the stock of the defendant and is also the owner of certain of the shares of the stock of other corporations, but denies that the defendant herein is one of many corporations conducted and operated by said Sinclair Consolidated Oil Corporation as a single enterprise, and alleges that defendant is a separate and distinct corporate entity functioning independently of the said Sinclair Consolidated Oil Corporation in its corporate acts and deeds, and defendant denies all allegations in said paragraph 3 contained inconsistent with these allegations.

Fourth. The defendant has no knowledge or information sufficient to constitute a belief as to the allegations of paragraph 4, of the Bill of Complaint.

Fifth. In answer to paragraph 5 defendant has no knowledge sufficient to constitute a belief as to the allegations "that during the month of June, 1916, Ulysses S. Jenkins, T. S. Black, and W. C. Black, of Chicago, Illinois, and A. G. Maguire, of Milwaukee, Wisconsin, associated themselves in business for the purpose of developing and using the alleged inventions of the said Jenkins, and for that purpose the said Jenkins conveyed to the said T. S. Black, W. C. Black and A. G. Maguire, an interest in the said

alleged inventions and in all patents to be issued thereon, so that the said Ulysses S. Jenkins, T. S. Black, W. C. Black [fol. 61] and A. G. Maguire, on or before the 20th day of June, 1916, became jointly the owners of the said alleged inventions and of all patents to be issued thereon; and thereafter the said Ulysses S. Jenkins, T. S. Black, W. C. Black and A. G. Maguire, for the purpose of utilizing the said alleged inventions and patent rights, undertook the organization of the plaintiff corporation, and in the month of July, 1916, subscribed to the capital stock of the plaintiff corporation, and under date of September 25th, 1916, executed the Articles of Incorporation as required by the laws of the State of Wisconsin. The defendant denies the allegation "at which time the said Jenkins had made the inventions and discoveries described in the said letters patent and applied for the said letters patent." The defendant is without knowledge sufficient to constitute a belief as to the allegation "that while the United States Patent Office had not finally passed upon the inventions set up in the applications for said patents, nor finally determined just what claims would be allowed, yet it had become evident that if the said inventions were patentable, the said process and apparatus, and the patents thereon and any improvements thereto, would be of great value to persons engaged in the treatment of petroleum products." The defendant denies that the defendant, under its then name of Cudahy Refining Company, applied to the said Jenkins and his associates for an opportunity to investigate the said Jenkins process of treating petroleum; and further denies that the defendant stated that if Jenkins and his associates "would allow the said Cudahy Refining Company and its officers and representatives to have full knowledge of the said Jenkins process and apparatus, the applications for patents thereon then pending and its experimental still, the said Cudahy Refining Company would enter into a contract to purchase the right to use said process and the said patents in and about its treatment of petroleum products." The defendant further denies that it "stated that if the application for letters patent on said invention of Jenkins were granted the said Cudahy Refining Company would pay very large sums in royalties, and in the purchase of rights under said patents, amounting to many millions of dollars," and denies [fol. 62] "that the Cudahy Refining Company represented

that it was necessary to have in its possession the patent applications then pending of said Jenkins, the experimental still of the Jenkins Company, and also to have available the services of said Jenkins in order to adapt the said Jenkins processes and apparatus to its commercial needs and for use at its various plants and refineries"; and denies that "said Cudahy Refining Company represented that it would treat confidentially the disclosures of said patent applications, the experimental still, and the instructions of said Jenkins and his associates relative to the nature of the Jenkins apparatus and process and any improvements thereon." The defendant denies that the defendant "agreed that any improvements, whether of mechanical nature or in the process which may be developed as a result of the work of the Cudahy Refining Company's engineers, experts and other employes in familiarizing themselves with the Jenkins apparatus and processes, shall accrue to the Jenkins Petroleum Process Company, and shall become and remain the property of said Jenkins and his associates." The defendant denies that it entered into the certain contract set forth in said paragraph 5, and denies that the said instrument so set forth is a contract. The defendant admits that W. H. Isom was, on October 2, 1916, the president of the Cudahy Refining Company, but denies that the said W. H. Isom was duly empowered in law or in fact to sign the letter of October 2nd, 1916, set forth as aforesaid. It admits that Edward W. Isom was the son of W. H. Isom, and was an engineer in the employ of the said Cudahy Refining Company. The defendant has no knowledge sufficient to constitute a belief as to the remaining allegations in said paragraph 5 contained.

Sixth. In answer to paragraph 6 the defendant says that the plaintiff did in fact ship to the Coffeyville, Kansas, plant of the defendant a certain experimental still, but denies that the plaintiff loaned the defendant applications for patents thereon then pending, and denies that the experimental still so shipped to Coffeyville, Kansas, as aforesaid was "substantially the apparatus described in said letters patent, Exhibits Nos. 1 and 2," and alleges that the [fol. 63] said still was in an undeveloped, incomplete, inoperative, and experimental state and did not disclose anything of a patentable nature. The defendant admits that

the said Ulysses S. Jenkins visited the works of the defendant at Coffeyville, Kansas, but denies that the said Jenkins "there erected the said apparatus," and denies all other allegations in said paragraph 6 contained.

Seventh. The defendant denies the allegations of paragraph 7 of said Bill of Complaint.

Eighth. In answer to paragraph 8, the defendant denies that the said Edward W. Isom filed an application for letters patent of the United States on or about the 10th day of September, 1917, or at any time procured any letters patent of the United States embodying any ideas acquired from the said Jenkins or other officers and employes of plaintiff, by instructions or otherwise, and denies that the said application was filed "surreptitiously and without the knowledge of the plaintiff or its officers or representatives." The defendant admits that the said Isom procured Letters Patent No. 1,285,200, a copy of which is attached to the Bill of Complaint and marked Exhibit 3, and alleges that the invention set forth and disclosed thereby and claimed therein, was conceived by the said Isom prior to any transactions whatsoever between the said Isom and the said Jenkins and associates, or either of any of them.

Ninth. It denies the allegations of paragraph 9 in said Bill of Complaint contained.

Tenth. In answer to paragraph 10 defendant admits that it has a qualified possession of the said experimental apparatus, and denies all other allegations in said paragraph 10 contained.

Eleventh. The defendant denies the allegations of paragraph 11.

Twelfth. In answer to paragraph 12 the defendant denies that it owed or owes to the plaintiff any obligations by reason of the said letter of October 2nd, 1916, or otherwise, in respect to the Isom patent, a copy of which is attached to the Bill of Complaint and marked Exhibit 3, and denies all allegations in said paragraph 12 contained inconsitent with the foregoing.

[fol. 64] Thirteenth. In answer to paragraph 13 the dedefendant admits that the said Isom patent, Exhibit 3, to the

Bill was assigned to defendant by said Isom, but denies that the defendant owed any obligations to the plaintiff in respect to the Isom patent by reason of the said letter of October 2nd, 1916, or "out of any dealings between the plaintiff and the said defendant hereinbefore set forth." The defendant admits that it erected stills at some of its plants, but denies that it "turned over or attempted to turn over the control of the said apparatus, process and of the said method of 'cracking' petroleum products to the Sinclair Consolidated Oil Corporation." The defendant denies all other allegations in said paragraph 13 contained.

Fourteenth. Answering paragraph 14, the defendant denies the allegations that "the plaintiff, promptly after it had learned of the said action of the said Isom in obtaining the said letters patent, and in assigning the same to the defendant Refining Company, demanded of the said defendant Refining Company, that it assign to the plaintiff, and cause the said Isom to assign to said plaintiff, the said patent and all other processes, apparatus, and improvements discovered or invented by the defendant, their engineers, experts, employes or agents while in the possession of the said apparatus so invented by the said Jenkins, and devised or developed by the employes of the defendant Refining Company after it or they had received full information from the said apparatus, patent applications and the said Jenkins in the art, as hereinabove set forth." The defendant admits that it has not caused the assignment of any inventions or letters patent to the plaintiff, and denies that it is under any obligations so to do. The defendant further denies that it owes any obligations to the plaintiff in connection with any improvements and developments of the said Jenkins apparatus and process and denies that it or its employes ever made any improvements or developments thereof through any knowledge gained by them from the use of the said Jenkins apparatus and process, the patent applications thereon, or any instructions obtained from the said Jenkins. The defendant further denies all allegations of paragraph 14 inconsistent with the foregoing.

[fol. 65] Fifteenth. Defendant admits in answer to paragraph 15 that the oil company is a corporation of great size,

and carries on its business operations throughout the United States and other portions of the world; it denies that the oil company ever advertised that its business would be increased on account of the ownership by the defendant herein of the said Isom patent, and further denies all allegations of paragraph 15 inconsistent with the foregoing allegations.

Sixteenth. Defendant denies the allegations of paragraph 16 in said Bill of Complaint contained.

Seventeenth. In answer to paragraph 17 the defendant admits that any invention or process, if commercially advantageous, which enables a refinery to extract from crude oil or heavier petroleum products a large percentage of gasoline is a process of great value and denies all other allegations of paragraph 17.

Eighteenth. The defendant admits the allegations of paragraph 18.

Nineteenth. The defendant admits the allegations of paragraph 19.

Further answering the said bill of complaint and for a further defense thereto, the defendant alleges:

First. That in the year 1916 Ulysses S. Jenkins and W. C. Black, who then were and for sometime prior thereto had been employes of the defendant, submitted to the defendant an alleged process for the cracking of petroleum. That the experimental still to be used in the demonstration of this alleged process was shipped by the said Ulysses S. Jenkins and W. C. Black to the plant of the defendant at Coffeyville, Kansas, at which place it was attempted to be set up, under the personal direction and supervision of the said Jenkins, in the portion of said plant of the defendant established for investigation of cracking processes. That the said experimental still proved to be inoperative and incapable of demonstrating the alleged process, disclosed nothing of a patentable nature, and was abandoned by the [fol. 66] said Jenkins and his associates at the said plant of the defendant in Coffeyville, Kansas. The said Jenkins, who had gone to the said Coffeyville plant with the said apparatus, left the plant without the knowledge or advice of the defendant and never returned thereto. That because

of the inoperative character of said Jenkins experimental still the experts and engineers of defendant were never at any time able to and never did carry out experiments upon the alleged Jenkins improved process upon the petroleum products of defendant. That the said experimental still has, since the said time of abandonment by the said Jenkins and his associates, remained in the store house of the defendant at its said Coffeyville plant subject to the orders of the said Jenkins, and that since the said time of abandonment and departure from the said Coffeyville plant of the said Jenkins the said experimental still has never been investigated, studied, tested, experimented upon, or in any other manner dealt with by the defendant. That neither the defendant nor the said Edward W. Isom nor any of the officers, servants or employes of the defendant gained or acquired any new or useful knowledge or information relative to the art of cracking petroleum or apparatus to be used therefor, by reason of any disclosures made to them or either of them by the said Ulysses S. Jenkins or his associates, or by the exhibition to them or either of them of said experimental still, or otherwise.

Second. That the invention of the said Edward W. Isom described or intended to be described in Letters Patent of the United States No. 1,285,200, Exhibit 3 to the Bill of Complaint, did not result from any disclosure, knowledge or information imparted to the said Edward W. Isom or to any of the officers, or employes of the defendant by the said Jenkins, or, from the said experimental still, or otherwise, but resulted from the independent conception of the said Edward W. Isom, who was and is a skilled mechanical engineer working in the art of cracking petroleum, and whose conception of the said invention set forth in Letters Patent No. 1,285,200 occurred prior to October 2nd, 1916, and independent of any association, discussion or conference with the said Jenkins and his associates, or any ex-
[fol. 67] hibition by them to the said Isom of the said so-called Jenkins experimental still.

Third. That the said invention of Edward W. Isom set forth in Letters Patent of the United States, No. 1,285,-200, Exhibit 3 to the Bill of Complaint, is not the same, nor an improvement upon, in, or to, the said Jenkins experimental still or alleged Jenkins process; and is not the

same, nor an improvement upon, in or to either or any of the alleged inventions set forth in the Jenkins patents, Exhibits 1 and 2 to the Bill of Complaint, but on the contrary the said Isom invention is radically different from any of either of the aforesaid alleged Jenkins inventions; embodies a wholly different idea of means; operates upon different principles, and accomplishes different and highly successful results. That said Isom invention is not an improvement, whether of a mechanical nature, or in the process, developed as the result of the work of the engineers and experts of defendant in familiarizing themselves with the said Jenkins apparatus and alleged Jenkins process, but on the contrary said Isom invention is, as above set forth, a wholly new and distinct invention made by said Edward W. Isom, independently of, and prior to knowledge of, said Jenkins apparatus and said alleged Jenkins process, and based upon a wholly different principle and mode of operation.

Fourth. That the said experimental still of the said Jenkins and the so-called Jenkins process embodied nothing that was not then well known in this art, and open to public use, and that the Jenkins patents, Exhibits 1 and 2 to the Bill of Complaint, are void for want of invention and for inoperativeness.

Further answering the said bill of complaint and for a further defense thereto, the defendant alleges:

First. That the letter of October 2nd, 1916, the predicate of the plaintiff's cause of action herein, is not such a contract as a court of equity will specifically enforce in that—

[fol. 68] (a) It is not supported by a valuable consideration.

(b) It is uncertain, indefinite and ambiguous.

(c) It lacks mutuality.

(d) The plaintiff abandoned its obligations provided for in said letter.

(e) The letter of October 2nd, 1916, is a mere step in uncompleted negotiations and is a part of an otherwise incomplete transaction.

Second. Plaintiff herein is not entitled to specific performance of the alleged contract of October 2nd, 1916, because—

(a) It is guilty of laches.

(b) It abandoned its obligations in said letter contained.

(c) If there be a consideration in support of said alleged contract, the same has failed.

(d) The plaintiff was not in esse on October 2nd, 1916, and has no rights under the alleged contract of October 2nd, 1916.

(e) The Jenkins patents are void for lack of invention.

(f) The Jenkins experimental still was inoperative.

(g) The Isom patent was not in esse on October 2nd, 1916.

Further answering said bill of complaint and for a further and affirmative defense thereto and by way of counterclaim defendant alleges:

First. That the defendant is the owner of the entire right, title and interest in and to letters patent, of the United States No. 1,285,200, a copy of which is attached to the Bill of Complaint herein and marked Exhibit 3. Being so possessed of such entire right, title and interest the defendant has since on or about the first day of January, 1917, expended large sums of money in the development and installation of the process and apparatus described in said letters patent and is engaged in operations thereunder which constitute a great economic enterprise, and which contribute to the national prosperity and welfare of the people of these United States.

[fol. 69] Second. That the said letters patent embodying the aforesaid invention of Edward W. Isom comprehend and protect for defendant, in accordance with law, the invention of the said Edward W. Isom, conceived by the said Edward W. Isom independently of, and long prior to, any association, relation or connection between the said defendant, or Edward W. Isom, and the plaintiff and any of its officers or servants.

Third. That the claim of the plaintiff herein constitutes a cloud upon the title of the defendant in and to said letters patent No. 1,285,200, and is without foundation in fact or in law.

Wherefore defendant prays judgment as follows:

(a) That the Bill of Complaint be dismissed.

(b) That the defendant be decreed to be the owner of the entire right, title and interest in and to letters patent No. 1,285,200, freed from all claims and demands whatsoever at law or in equity of the plaintiff.

(c) That the defendant be hence dismissed with the costs and disbursements of this action.

(d) That the defendant be granted such further relief as to the Court may seem just and equitable.

Jones, Addington, Ames & Seibold, Verrill, Hale, Booth & Ives, Solicitors for Defendant. W. Clyde Jones, Keene H. Addington, R. T. Osborn, J. B. Macauley, Chas. D. Booth, of Counsel.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S REPLY TO COUNTERCLAIM—Filed August 31, 1921

The plaintiff, Jenkins Petroleum Process Company, in reply to the counter-claim filed by defendant herein says:

First. That with respect to the allegations contained in paragraph "First" of said counter-claim, it denies that the [fol. 70] defendant is the owner of the entire right, title and interest in and to Letters Patent of the United States No. 1,285,200, copy of which is attached to the bill of complaint herein and marked Exhibit "3," or any or either thereof, and says that in equity the entire right, title and interest to said Letters Patent belongs to the plaintiff, and that whatever right, title and interest to said Letters Patent may be vested in said defendant, the said defendant holds in trust for and to the use of said plaintiff. That the plaintiff has no knowledge as to the amount of money

expended by the defendant in either the development or installation of the process described in said Letters Patent, but admits that defendant is engaged in the operations thereunder which constitute a great economic enterprise and which contribute to the national prosperity and welfare of the people of the United States.

Second. That with respect to the allegations contained in paragraph "Second" of said counter-claim, the plaintiff says that the said Letters Patent therein referred to do not protect the defendant in the use of said Letters Patent, and further says that the said invention referred to in said Letters Patent was not conceived by the said Edward W. Eisom either independently of *of* long prior to any association, relation or connection between the said defendant or the said Edward W. Eisom and the plaintiff and any of its officers and servants, but on the contrary the plaintiff says that the facts with respect to said Letters Patent are as set forth in the original bill of complaint filed herein.

Third. That with respect to the allegations contained in paragraph "Third" of said counter-claim, this plaintiff says that its claim is a cloud upon the title of the defendant in and to said Letters Patent No. 1,285,200 only because in equity the defendant has no equitable right, title or interest therein, and whatever right, title and interest therein it may have, it holds in trust for this plaintiff.

Wherefore this plaintiff requests that the said counter-claim be dismissed with costs to this plaintiff.

[fol. 71] Jenkins Petroleum Process Company, by Parkinson & Lane, Mayers, Meyers, Austrian & Platt, Its Solicitors. Henry Russell Platt, Philip G. Clifford, of Counsel.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S AMENDMENT TO ANSWER—Filed September 25, 1932

Now comes the defendant, pursuant to leave of Court first had and obtained, and amends the answer filed herein, as follows:

Add to paragraph Eighth, page 6, of the Answer:

And defendant further alleges that the apparatus described and claimed in the Isom patent No. 1,285,200, and the process followed by the defendant in the use of said apparatus, are wholly different in principle, construction and mode of operation from anything alleged to have been disclosed to the said Cudahy Refining Company, or its successor the Sinclair Refining Company, by the said Jenkins, or any officer of the plaintiff, and do not embody any ideas acquired, or information or instruction gained from said Jenkins, or any officer of the said plaintiff.

Paragraph Sixteen of the Answer, page 9, is amended by adding thereto:

And defendant further says that—

(a) The apparatus and cracking process covered by the Isom patent, and employed by the defendant in practice, are neither disclosed nor set forth in either of the Jenkins patents No. 1,226,526 and No. 1,321,749, Exhibits Nos. 1 and 2, respectively, but are radically different in construction, mode of operation and principle from anything disclosed in and by the said Jenkins Letters Patent, or contained in any alleged discoveries, inventions and processes of said [fol. 72] Jenkins now owned by the plaintiff and alleged to have been disclosed to the said Cudahy Refining Company or its successor the Sinclair Refining Company.

(b) That the apparatus and cracking process covered by the Isom patent, and employed by the defendant in practice, are neither improvements, modifications nor developments of any alleged discoveries, inventions and processes of said Jenkins, and were not devised and contrived by the defendant and its employes through the use of any apparatus of the said Jenkins, or the plaintiff, or any information, instructions or opportunities for investigation which were afforded to the defendant, either in pursuance of any understanding had prior to the 2nd day of October, 1916, or in pursuance of the terms of the alleged agreement of October 2nd, 1916, but, on the contrary, are improvements, modifications and developments of what was well known in the art long prior to any alleged invention and discovery of

the said Jenkins, said prior art being set forth in paragraph Sixteen of the Answer, sub-head (d) hereof.

(c) The alleged discoveries, inventions and processes of the said Jenkins, alleged to have been disclosed to defendant, or as set forth in the Jenkins patents, Exhibits Nos. 1 and 2, are not discoveries or inventions within the meaning of the Statutes of the United States, but consist of mere adaptations of what was well known in the art to the required uses, and involved only mere mechanical skill.

(d) Long prior to the time that the said Jenkins made the alleged discoveries, inventions and processes, as set forth in Exhibits Nos. 1 and 2, and long prior to the time that the said Jenkins, or any of his associates, is alleged to have made disclosure of Jenkins alleged discoveries and inventions to the defendant, or its predecessor Cudahy Refining Company, the same, or substantial and material parts thereof, were described and shown in United States and foreign Letters Patent and publications, enumerated in the following list; that more than two years prior to the [fol. 73] application date of the applications upon which said respective Letters Patent to Jenkins, Exhibits Nos. 1 and 2, were issued, the alleged discoveries, inventions and processes, or substantial and material parts thereof, were described and shown in the Letters Patent and publications set forth in the following list, which bear date more that two years prior to the filing dates of the applications for the respective Letters Patent to Jenkins; that prior to the alleged discoveries, inventions and processes, as set forth in Exhibits Nos. 1 and 2, the same, or substantial and material parts thereof, were invented by or known to the persons who became the patentees of the Letters Patent mentioned in the following list, at the respective places of residence of the patentees mentioned in said Letters Patent; said list above mentioned being as follows:

United States Patents

Number	Patentee	Date
28,448	L. Atwood	May 29, 1860
94,978	S. T. Russel	September 21, 1869
117,425	J. J. Johnston	July 25, 1871
125,633	P. H. Vander Weyde	April 9, 1872
132,403	J. Kidd	October 22, 1872

Number	Patentee	Date
136,008	E. Schalk	February 18, 1873
143,007	R. Gerner	September 23, 1873
154,772	S. Van Syckel	September 8, 1874
159,069	H. C. Bull	January 26, 1875
191,203	S. Van Syckel	May 22, 1877
195,652	H. C. Rose	September 25, 1877
282,239	J. Thomas	July 31, 1883
305,056	R. Dean	September 16, 1884
413,906	V. W. Blanchard	October 29, 1889
477,153	C. M. Pielsticker	June 14, 1892
553,841	C. W. Cooper	February 4, 1896
776,639	P. Blanc	December 6, 1904

[fol. 74]

976,975	J. H. Adams	November 29, 1910
1,084,080	G. H. Gillons	January 13, 1914
1,119,496	E. M. Clark	December 1, 1914
1,170,884	S. H. Edwards	February 8, 1916
1,175,910	W. A. Hall	March 14, 1916
1,200,281	Waxler & Sapp	October 3, 1916
1,203,312	W. M. Cross	October 31, 1916
1,224,485	G. Mersereau	May 1, 1917
1,226,990	W. M. Parker	May 22, 1917
1,229,171	H. A. Turnbull	June 5, 1917
1,235,777	Eldred & Mersereau	August 7, 1917
1,239,423	A. D. Smith	September 4, 1917
1,281,884	M. J. Trumble	October 15, 1918
1,282,906	G. Mersereau	October 29, 1918
1,324,075	A. D. Smith	December 9, 1919
1,327,263	G. H. Adams	January 6, 1920
1,335,767	F. E. Wellman	April 6, 1920
1,345,452	L. W. McOmber	July 6, 1920
1,388,514	E. M. Clark	August 23, 1921

British Patents

Number	Date	Patentee
64	Of 1872	J. A. Coffey
1424	Of 1915	E. M. Clark
6466	Of 1890	C. M. Pielsticker
7535	Of 1915	G. P. Lewis
7983	Of 1892	Paul Dvorkovitz
8336	Of 1909	H. A. Kittle

German Patents

Number	Date	Patentee
166,723	Of January 27, 1904	DeClercq's Patent Gesellschaft, etc.
271,003	Of July 5, 1912	Carl Semmler

Russian Patents

No. 4782	(175 of 1891)	Schuchow & Gawrilow of 1891

[fol. 75] (e) The alleged invention disclosed and claimed in each of the Letters Patent, Exhibits Nos. 1 and 2, is not substantially the same invention that is described and claimed in and comprehended by the application as originally filed in the United States Patent Office; that after the patentee of said Letters Patent had made oath to said original application, and after said application had been filed in the United States Patent Office, substantial and material additions thereto, and variations and changes therein were made, and new matter was unlawfully introduced in said application.

(f) The claims of each of the Jenkins Letters Patent in suit, if construed broadly enough to read upon defendant's system, are anticipated by the prior art patents, inventions and publications mentioned in paragraph 16 of the answer, sub-head (d) hereof.

(g) The said alleged improvement set forth in each of said Letters Patent to Jenkins, Exhibits Nos. 1 and 2, is impracticable and inoperative, and has made no impression on the commercial art, and the claims of said Letters Patent should, if valid at all, receive a narrow and restricted construction and be limited to the specific devices illustrated and claimed in each of said Letters Patent.

(h) The defendant has never advertised or installed, sold or used, in its commercial operations, any apparatus or process embodying any discovery, inventions or processes of said Jenkins, or covered by said Jenkins patents, Exhibits Nos. 1 and 2, or any improvements, modifications and developments thereof, either contrived or designed by defendant and its employes through the use of any Jenkins apparatus, or built in accordance with any information, in-

struction and opportunities for investigation afforded to the defendant or its predecessor by the said Jenkins, or any of the officers of the plaintiff, pursuant to any understanding with plaintiff or otherwise.

[fol. 76] (i) That the alleged Jenkins process and apparatus were in the experimental stage, unsuccessful and impracticable, and represented merely inchoate and undeveloped ideas, at the time of the alleged disclosure to the defendant or its predecessor Cudahy Refining Company, which ideas had not been at that time, and have not been since that time, and prior to the filing of the bill of complaint herein, practically or successfully reduced to practice or demonstrated.

(j) Defendant further shows that the second Jenkins Patent, No. 1,321,749, particularly claims 15 to 21 thereof, is void for the following reasons: Because said claims 15 to 21 constitute new matter and a departure from the original disclosure in the application; because said claims 15 to 21 constitute an unlawful expansion and broadening of the subject-matter and the claims of the application and patent; because no supplemental oath was filed in support of said claims 15 to 21.

(k) Defendant further shows that said second Jenkins patent No. 1,321,749, and particularly claims 15 to 21 thereof, is void for double patenting in view of the first Jenkins patent No. 1,226,526, constituting an unauthorized and illegal attempt to extend the monopoly of said first-mentioned Jenkins patent.

(l) Defendant further shows that the second Jenkins patent, and particularly claims 15 to 21 thereof, is void because of the circumstances and the conduct of the applicant surrounding the prosecution of the said application.

(m) Defendant further shows that under the facts and circumstances of this case plaintiff is estopped to assert the validity or infringement of claims 15 to 21 of the second Jenkins patent as against this defendant.

(n) Defendant further shows that plaintiff under the facts and circumstances of this case is estopped from asserting that defendant is not entitled to make and use stills

[fol. 77] of the so-called Isom type made under the Isom patent No. 1,285,200 in the manner and for the purpose said stills have been employed and are now employed by defendant.

Jones, Addington, Ames & Seibold, Solicitors and of Counsel for Defendant. Jones, Addington, Ames & Seibold, Solicitors for Defendant.

IN UNITED STATES DISTRICT COURT

FINAL DECREE ON ORIGINAL BILL No. 816—Filed August 13, 1926

This cause came on to be heard at a stated term, and was argued by counsel, and thereupon, upon consideration thereof, it was

Ordered, adjudged, and decreed as follows:

That the bill of complaint herein be, and the same hereby is, dismissed, with costs to be taxed by the Clerk of this Court, and the defendant have execution for such costs.

Dated August 13th, 1926.

John A. Peters, United States District Court Judge.

Approved as to form.

Philip G. Clifford, Solicitor for Plaintiff.

MANDATE CIRCUIT COURT OF APPEALS—Filed July 31, 1929

UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable Judge of the District Court of the United States for the District of Maine, Greeting:

Whereas lately in the District Court of the United States for the District of Maine, before you, in a cause numbered [fol. 78] and entitled No. 816, Equity, Jenkins Petroleum Process Company, Plaintiff, v. Sinclair Refining Company, Defendant, on August 13, 1926, the following Final Decree was entered:

This cause came on to be heard at a stated term, and was argued by counsel, and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed as follows:

That the bill of complaint herein be, and same hereby is, dismissed with costs to be taxed by the Clerk of this Court, and that the defendant have execution for such costs.

Dated August 13th, 1926.

John A. Peters, United States District Court Judge.

And whereas said Jenkins Petroleum Process Company, plaintiff appealed from said decree to this United States Circuit Court of Appeals for the First Circuit, as by inspection of the transcript of the record in said cause of the said District Court, which was brought into the United States Circuit Court of Appeals for the First Circuit, by virtue of the aforesaid appeal agreeably to the act of Congress, in such cases made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-eight, the said cause came on to be heard before the said Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now, to wit, July 30, 1929, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed so far as it denies specific performance of the contract of October 2, 1916. But so far as it dismisses the bill as to other issues involved, it is reversed; and as to those issues the case is remanded to the District Court with directions to transfer it to the law side of the court, where within thirty days from the date [fol. 79] of this order the plaintiff may have leave to amend its bill of complaint into an action at law for breach of the contract of October 2, 1916. No costs are to be allowed to either party.

You, therefore, are hereby commanded that such further proceedings be had in said cause in conformity with the aforesaid decree of this court, as according to right and

justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable W. H. Taft, Chief Justice of the United States, the thirtieth day of July, in the year of our Lord one thousand nine hundred and twenty-nine.

Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, by Roger A. Stinchfield, Deputy Clerk.

In United States District Court, District of Maine, Southern Division

In Equity. No. 816

Jenkins Petroleum Process Company, Plaintiff,

vs.

Sinclair Refining Company, Defendant

Order Transferring Case to Law Side of Court—Filed August 29, 1929

Pursuant to the mandate of the Circuit Court of Appeals in the above entitled cause under date of July 30th, 1929, it is hereby ordered, adjudged and decreed as follows: [fol. 80] That the said cause be transferred to the law side of the Court, with leave to the said Plaintiff, within thirty (30) days from the date of said mandate, to amend its bill of Complaint into an action at law for breach of the contract of October 2nd, 1916.

Dated at Portland, this 28th day of August, 1929.

Clarence Hale, United States District Judge.

In United States District Court

No. 939. Equity

Plaintiff's Objections to Items in Defendant's Præcipe—Filed June 18, 1932

Comes now the Jenkins Petroleum Process Company, the plaintiff and appellant in the above entitled suit, and ob-

jects to the inclusion in the transcript of the record on the appeal by the plaintiff to the United States Circuit Court of Appeals for the First Circuit, of each and every item included in the defendant's præcipe which was filed herein on May 13, 1932, for the reason and on the ground that each of said items is a pleading in another suit, to-wit: Jenkins Petroleum Process Company v. Sinclair Refining Company, in Equity No. 816, in the District Court of the United States for the District of Maine; that no one of said pleadings is or ever has been a part of the record in this suit, and that each of said items is irrelevant and immaterial to the consideration and determination of any issue to be submitted on this appeal to the United States Circuit Court of Appeals for the First Circuit.

June 20, 1932.

Philip G. Clifford, Solicitor for the Plaintiff. C. Stanley Thompson, Rush H. Williamson, Frederick Schafer, Washington, D. C., of Counsel.

[fol. 81] IN UNITED STATES DISTRICT COURT

MOTION TO OMIT ITEMS IN DEFENDANT'S PRÆCIPE—Filed June 18, 1932

Comes now the Jenkins Petroleum Process Company, the plaintiff and appellant in the above entitled suit, and respectfully moves that the court enter an Order directing the Clerk of this court to omit from the transcript of the record on the appeal by the plaintiff to the United States Circuit Court of Appeals for the First Circuit, each and every item included in the defendant's præcipe which was filed herein on May 13, 1932, for the reason and on the ground that each of said items is a pleading in another suit, to-wit: Jenkins Petroleum Process Company v. Sinclaim Refining Company, in Equity No. 816, in the District Court of the United States for the District of Maine; that no one of said pleadings is or ever has been a part of the record in this suit, and that each of said items is irrelevant and immaterial to the consideration and determination of any issue to be submitted on this appeal to the United States Circuit Court of Appeals for the First Circuit.

And the plaintiff above named further respectfully moves that in the event the foregoing motion be not granted, the court enter an order that the items included in the defendant's præcipe herein be printed in the transcript of the record on the appeal of this suit to the United States Circuit Court of Appeals for the First Circuit at the expense of the defendant.

June 20, 1932.

Philip G. Clifford, Solicitor for the Plaintiff. C. Stanley Thompson, Rush H. Williamson, Frederick Schafer, Washington, D. C., of Counsel.

[fol. 82] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO EXCLUDE ITEMS IN DEFENDANT'S PRÆCIPE—Filed June 21, 1932

This cause came on to be heard on the plaintiff's motion to omit from the transcript of the record the items included in the defendant's præcipe, and on the plaintiff's objections to the inclusion in the transcript of the record on the appeal by the plaintiff to the United States Circuit Court of Appeals for the First Circuit, of each and every item included in the defendant's præcipe, and upon consideration thereof it is hereby

Ordered, adjudged and decreed as follows:

That the items included in the defendant's præcipe be printed in the transcript of the record on the appeal by the plaintiff to the United States Circuit Court of Appeals for the First Circuit.

June 21st, 1932.

John A. Peters, United States District Judge.

[fols. 83 & 84] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 85] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1932

No. 2722

JENKINS PETROLEUM PROCESS COMPANY, Plaintiff, Appellant,

v.

SINCLAIR REFINING COMPANY, Defendant, Appellee

Appeal from the District Court of the United States for the District of Maine

Before Bingham, Wilson, and Morton, JJ.

OPINION OF THE COURT—January 3, 1933

MORTON, J.:

This is a bill for discovery in aid of an action at law brought by the Jenkins Company against the Sinclair Company. The District Court sustained a motion to dismiss and dismissed the bill; and the plaintiff appealed. The first question is whether on its face the bill states a case for discovery.

The first point is whether bills for discovery still lie in the Federal Courts, or whether they have been superseded by Rev. Stats., sec. 724. In Carpenter v. Winn, 221 U. S. 533 at 539-540, it is said, "The statute may therefore be well regarded as affording a short and quick way of obtaining documentary evidence for use in the trial of an action at law, leaving the parties to a bill of discovery if they desire the production before the trial for the purpose of preparing for it." See too Pressed Steel Car Co. v. Union [fol. 86] Pac. R. Co., 240 Fed. 135, s. c. 241 Fed. 964; and Colgate v. Compagnie Francaise, 23 Fed. 82, an able opinion by Judge Wallace. It devolves upon the party filing such a bill to show that there is real need of it, and that the desired evidence cannot be obtained in a practically useful way under section 724. If these requirements are met such a bill is still maintainable. The decision in Carpenter v. Winn, that under section 724 the production of evidence could not be ordered in advance of trial, rather enlarges the field of bills for discovery. It is highly desir-

able as Judge Wallace suggests that such evidence be sifted out before the jury trial.

The next point is whether such bills may be brought to obtain evidence relevant only on the amount of damages. In Munger v. Firestone Co., 261 Fed. 921 (C. C. A. 2), and Loose v. Bellows, 266 F. R. 81 (C. C. A. 2), it was decided that bills for discovery could be used only to obtain facts bearing on the "issues", i. e., on questions of liability, and not to obtain evidence of damage. The opposite result was reached in Guyot v. Hilton, 32 Fed. 743, cited with approval in Carpenter v. Winn, supra, and in Colgate v. Compagnie Francaise, supra, where apparently no such distinction between liability and damages was suggested.

In the state courts, while the question is generally affected by statutory provisions, discovery has been allowed with respect to damages. McKinnon-Young Co. v. Stockton, 55 Fla. 708; Wells v. Holman, 115 So. Carolina 443 (106 S. E. 224); Sherwood Bros. Inc. v. Yellow Cab Co., 283 Pa. 488 (129 At. 563). In the South Carolina case, supra, the statute permitted discovery of evidence "relating to the *merits* (italics mine) of the action or defense". In the Pennsylvania case, supra, the statute permitted "discovery of facts material to a just determination of the *issues.*" (Italics mine.) Both these statutes opened the way to the distinction between liability and damages on which the Munger and Loose cases, supra, turned; and in neither was the distinction recognized.

In England also discovery is now regulated by statutes. Irrespective of them, however, the right to it does not [fol. 87] appear to have been limited by the technical "issues" presented in the action at law, but to have been allowed as to facts bearing on any "question" presented in that action. The present case is fully covered by Saunders v. Jones [1877] L. R. 7 Ch. 435. The text writers are to the same effect. "As all the points in the cause will come on for trial simultaneously, the right of the plaintiff to discovery will of necessity attach upon them all." "Points in the Law of Discovery" by Wigram, 1 "Am. Ed. p. 80." "Where the questions of liability generally, and of damages, *were severable* (italics mine), discovery which was material to the latter question only, would not be given before the hearing." "The Law and Practice of Discovery" by Peile, page 29. See too "Principles and Prac-

tice of Discovery" by Bray, Chapter II; and see Peile, supra, Chapter IV, discussing this question and citing cases where discovery as to damages was allowed, and 11 Halsbury Laws of England, page 52.

There is a practical distinction as above noted between cases in which the plaintiff will be compelled to present all his evidence, both on liability and on damages, at the same hearing, and cases in which the assessment of damages can be postponed until the question of liability has been determined. The English law and the weight of American decisions appear to be that in cases of the former sort discovery will be ordered on damages as well as on liability.

We think this much the sounder view. Damages are an important element in litigation; they are the reason why an action is brought. There is no good reason why discovery should not be ordered as to damages, except that if the defendant wins on liability the evidence on damages will go for nothing. This is always true of evidence of damages in actions at law; it always goes for nothing if the defendant prevails. But this has never been thought a sufficient reason for splitting a jury trial; and it does not seem to us a sufficient reason for refusing discovery. We are not impressed by the distinction—for which no authority is cited—between "issues" and questions of fact, made in the Munger case.

[fol. 88] The next point is whether the evidence sought to be obtained is relevant on the issues presented in the action at law. In substance the declaration therein alleges that the Sinclair Company was under a contractual obligation to cause to be assigned to the Jenkins Company a certain application for a patent made by one Isom employed by the Sinclair Company; that the Sinclair Company did not cause the application to be so assigned; that instead the application was assigned by Isom to the Sinclair Company, to which company the patent granted on the application was issued; that the Sinclair Company used the invention in a large way with great success in its business.

The plaintiff's damages are the loss which it sustained by being deprived of the application and the resulting patent. The Sinclair Company contends that the grant of the patent and the commercial use of the invention are not

admissible on the value of the application and are therefore irrelevant on the question of damages.

An application for a patent, being a thing sui generis, has no "market" value in the strict use of that term. Standard Oil Co. v. So. Pacific Co., 268 U. S. 146; United States Frumentum Co. v. Lauhoff, 216 Fed. 610 (C. C. A. 6). Its money value may be estimated from the nature of the invention disclosed, its place in the art to which it relates, the step which the inventor took, and the change which it effected in the practice of the art. These facts, and other relevant circumstances, may be supplemented by opinion evidence of value, as in the case of real estate. Montana Ry. Co. v. Warren, 137 U. S. 348.

We do not think that a court, valuing in judicial proceedings an invention described in an application for a patent, is obliged to shut its eyes to the result of the application, nor to the commercial utility of the invention as shown by the use of it in the art or industry to which it relates, but may take evidence on those points up to the time of trial. Williston on Contracts, page 2394.

Such evidence is not for the purpose of showing increase in value or new uses—which as is well settled with regard to the valuation of land taken by eminent domain would not [fol. 89] be admissible—but to show the inherent character and place of the invention in question. It is analogous to evidence of successful commercial use of a patent on the question of invention, and of the actual results of a physical injury for which damages are sought. Hetzel v. B. & O. R. R. Co., 169 U. S. 26; Cincinnati S. L. Co. v. Western S. L. Co., 152 U. S. 200. Of course commercial success of an invention may be due, less to its own merit, than to the ability with which it was exploited The weight to be given such evidence rests in the discretion of the jury or trier of the fact. We can not say that no evidence of that sort ought to be received in the action at law to which this bill of discovery relates, and that therefore discovery of it ought not to be ordered.

The profits if any which the Sinclair Company made by using the Isom invention have no relevancy on the question of damages, and no discovery should be ordered in respect to them. The plaintiff is not suing as the equitable owner of the patent. Our previous decision precludes it

from that position. Jenkins Co. v. Sinclair Co., 32 Fed. (2d) 247 (C. C. A. 1).

Nor is the precise extent to which the defendant made use of the Isom invention material on the plaintiff's case in chief. Non constat that the defendant would have used the invention as it did if the plaintiff had owned the patent. The plaintiff is entitled to show the general facts about the Isom invention, not specific instances of profitable use by this person or that. The probative value of such evidence is outweighed by the extent and complexity of the collateral inquiries which it involves. If, however, the defendant should deny the utility and commercial success of the invention, evidence of the defendant's use of it might be highly significant; and under those circumstances the plaintiff would be entitled to discovery of them. The bill should be retained for this purpose. If such a situation shall develop at the trial, prompt discovery can then be ordered.

On the facts stated in the bill we think the plaintiff has made out a case warranting discovery along the lines above indicated.

Some question is raised as to the point of time at which the defendant's breach of contract occurred. The correct [fol. 90] date will depend on the facts proved at the trial. If there was no repudiation of the contract of which notice was given to the plaintiff, the contract may be regarded as broken when the defendant finally disabled itself from performing it. The defendant, after having taken the assignment of the application from Isom, could have reassigned it to the plaintiff with the same effect as if originally so assigned by Isom. The contract would have been complied with by such an assignment. The interposition of the mesne assignment would not affect the plaintiff's rights; and it was open to the defendant to carry out the contract in that way if it saw fit to do so. It was, therefore, within the power of the defendant to perform the contract at any time until the application had become merged into the patent. While the defendant could still have transferred the patent after it had been issued, the transfer of a patent is substantially different from the assignment of the application for it—the value of the patent can be greatly affected for better or worse by the way in which the application is handled in the patent office. On the facts alleged the con-

tract appears to have been broken on the date when the application became merged into the patent.

We think the questions presented were properly raised by the motion to dismiss. It may be that the defendant has weighty defenses on the facts. That circumstance, if it be true, has nothing to do with the present questions. For the present purposes we take the case as stated in the plaintiff's bill.

It follows that the judgment dismissing the bill must be reversed and the case remanded to the District Court for further proceedings in accordance with this opinion.

The decree of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion; the appellant recovers costs of appeal.

IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION

WILSON, J. (dissenting):

I am unable to agree that the bill of discovery should be sustained in this case when the only purpose is to procure evidence on the question of damages in the action at law; and, further, since it is not clear that it is necessary to [fol. 91] resort to it in order to procure the evidence held to be admissible in the opinion.

The only cases in which the issue of whether a bill of discovery was proper to obtain evidence solely on the question of damages was clearly before the court are: Munger v. Firestone Tire & Rubber Co., 261 Fed. 921, and Loose et al. v. Bellows Falls Pulp Plaster Co. et al., 266 Fed. 81. In each of these cases the Circuit Court of Appeals for the Second Circuit refused to sustain such a bill, and in the Munger case a writ of certiorari was denied by the Supreme Court, 252 U. S. 582.

The Munger case was a patent infringement case, and not grounded on a breach of contract as is the present case; but if a bill of discovery would ever lie to obtain evidence solely on the question of damages, we think it would lie in case of an action at law to recover damages for infringement of a patent.

The case of Loose et al. v. Bellows Falls Pulp Plaster Co. et al., supra, was an action at law on a breach of contract or license, in which case the court said, at page 83: "Equity will not aid law to ascertain damages by entertaining a bill for discovery," citing Munger v. Firestone Tire Co., supra. "A fortiori will it not retain a bill when the discovery desired has no other purpose than the liquidation of damages."

In the case of Bradford v. Indiana Harbor Belt R. Co., 300 Fed. 78, 83, discovery was refused on the ground that it was not shown that the plaintiff could not obtain all necessary information under Sec. 724, R. S., the court saying: "It is not to be presumed that the District Court would deprive him (plaintiff) of reasonable opportunity to examine them before the trial was concluded."

In the case of Pressed Steel Car Co. v. Union Pac. R. Co., 240 Fed. 135, the court sustained the bill, but clearly on the ground that it was essential in order to determine the liability of the defendant to ascertain whether the improvements protected by the plaintiff's patents were embodied in any of the cars constructed by or for the defendant, and also to what extent, if any, the defendant had to let bids for the construction of cars less than ten dollars lower than the plaintiff's bid for the same cars. The plaintiff had eleven [fol. 92] patents and the defendant 14,000 cars. That the evidence essential to determine liability also bears on the question of damages is no objection to sustaining such a bill.

The earlier cases of Colgate v. Compagnie Francaise, etc., 23 Fed. 82, and Guyot v. Hilton, 32 Fed. 743, do not hold that a bill for discovery will lie to obtain evidence of damages alone in an action at law. The complainant in the former case based its complaint, in part only, on the ground that discovery was necessary on the question of damages. The court evidently granted it as essential to enable the plaintiff to establish liability, and did not hold that a bill for discovery would lie solely to enable a plaintiff at law to prove damages. Neither does it appear that it was an issue in Guyot v. Hilton, supra. Carpenter v. Winn, 221 U. S. 533, goes no farther than to hold that a bill for discovery has not been abolished by the enactment of Section 724, R. S., and may still be invoked in proper cases; but

since the enactment of Section 724, R. S., it should only be sustained in exceptional cases. Pressed Steel Car Co. v. Union Pac. R. Co., supra.

While there may be cases in the several states holding to the contrary under state statutes or codes, and statements of text writers based on such cases, the only authoritative federal decisions we have on the precise question here involved hold that a bill of discovery will not lie to obtain evidence solely on the question of damages. It was a clear-cut issue in the Munger case, and the Supreme Court refused to disturb the ruling of the Circuit Court of Appeals.

Assuming that in exceptional cases a bill for discovery might lie in aid of proof of damages alone, where complicated questions would arise and require accounting, as in case of an action at law for infringement of a patent, I think there is not sufficient ground for sustaining such a bill in this case to obtain the evidence held to be admissible as to damages suffered by the plaintiff by reason of the breach of its contract with the defendant to convey the Isom patent to the plaintiff.

Certainly the power of the plaintiff to summon as witnesses the officers or employees of the defendant having [fol. 93] knowledge of the number of cracking stills operated by the defendant, with all plans and blue prints of the same, would give the plaintiff all the evidence held in the opinion to be admissible in this case, and required for opinion evidence as to the value of the application for a patent, or of the patent itself. Inasmuch as the plaintiff in this case cannot recover damages on the basis of royalties or profits gained by the use of the patent in issue, the need for preliminary examination of evidence admissible under the opinion of the court is not clear. At least, it does not appear that this is an "exceptional case" where justice cannot be attained under an action for breach of contract by invoking Section 724, or the right of the plaintiff to summon the officers and employees of the defendant as witnesses. United States v. Bitter Root Development Co., 200 U. S. 451, 475, 479.

Surely the officers managing the affairs of the plaintiff corporation, and especially Ulysses Jenkins, who acted in

an advisory capacity throughout the operation of the experimental still loaned to the defendant by the plaintiff corporation, which is engaged in the same kind of business as that of the defendant, must have knowledge of the nature of the Isom improvements from their expert knowledge of the oil cracking processes and from the application for the patent, and the patent itself, which are a part of the declaration in the action at law, and of the advance in the prior art, which was thereby made. Neither the extent of the use by the defendant nor the profits gained from the use of the improvements, it is held in the opinion, are admissible on the question of damages. The opinion also holds that the plaintiff is only entitled to show general facts about the Isom patent, not specific instances of its use. I think with its power to summon the patentee, Edward Isom, and any other officer or employee of the defendant, and to compel the production of any plans or blue prints or books of the defendant under Section 724, R. S., the plaintiff can prove its damages if it can show a breach of its contract. The burden is not on the defendant to satisfy the court that discovery "ought not to be ordered," but on the plaintiff clearly to show that it ought to be invoked. [fol. 94] I think the plaintiff has failed to sustain that burden in this case.

Unless it appears from the bill itself that the declaration in the action at law discloses an "exceptional case," and a proper one for invoking this extraordinary remedy, I find no authority for retaining the bill until the defendant files its pleadings in the law action, or until occasion for discovery shall develop in the trial of the action at law.

[fol. 95] On October 4, 1932, this case came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

Thereafter, to wit, on the third day of January, A. D. 1933, the opinion of the court (page 85) and a dissenting opinion (page 90) were filed, and the following Final Decree was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—January 3, 1933

This cause came on to be heard October 4, 1932, upon the transcript of record of the District Court of the United States for the District of Maine, and was argued by counsel.

Upon consideration whereof, It is now, to wit, January 3, 1933, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with the opinion passed down this day; the appellant recovers costs of appeal.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR EXTENSION OF TIME FOR FILING PETITION FOR REHEARING—Filed February 8, 1933

To the Honorable the United States Court of Appeals for the First Circuit:

The defendant-appellee, Sinclair Refining Company, by its solicitor undersigned, respectfully moves the court that it be permitted until February 11, 1933, to file a petition for rehearing in the above-entitled cause.

Sinclair Refining Company, by Frank E. Barrows,
Its Solicitor.

[fol. 96] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING MOTION FOR EXTENSION OF TIME—February 8, 1933

It is ordered that appellee's motion to extend time for filing a petition for rehearing be, and the same hereby is, denied.

By the Court.

Arthur I. Charron, Clerk.

MEMORANDUM RE STAY OF MANDATE

Thereafter, to wit, on February 11, 1933, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 97] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 10, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,449. U. S. Circuit Court of Appeals, First Circuit. Term No. 752. Sinclair Refining Company, petitioner, vs. Jenkins Petroleum Process Company. Petition for a writ of certiorari and exhibit thereto. Filed March 3, 1933. File No. 37,449.